ORIGINAL CIVIL.

Before Sir Basil Scott, Knight, Chief Justice, and Mr. Justice Batchelor.

THE PANJAB NATIONAL BANK, LIMITED, APPELLANTS AND PLAINTIFFS, *v.* THE MERCANTILE BANK OF INDIA, LIMITED, RESPONDENTS AND DEFENDANTS.*

1911. *January* 19. *March* 6.

Banker and customer—Effect of a blank draft which is not addressed to any specific banker—Negligence of customer leading to payment of forged cheque by banker—Effect of negligence when not the proximate cause of payment.

The plaintiffs were a Banking Corporation with their head office at Lahore and branch offices at Amritsar and elsewhere. The defendants were a Banking Corporation having a branch at Bombay.

In 1904 the plaintiffs opened a current account with the defendants and sent the defendants a list of the officers of the plaintiffs authorised to sign for the plaintiffs, including the name of Madho Ram, the manager of the Amritsar office. Madho Ram had acted on occasions previous to this date as the manager of the Lahore office.

It was the custom of Madho Ram when leaving the bank premises for a short time both when acting as manager at Lahore and afterwards when manager at Amritsar to leave with the accountant blank drafts and blank letters of advice ready signed by him for use as occasion occurred. These drafts were not destroyed after his return.

On the 2nd of October the defendants cashed a draft presented to them for payment for Rs. 10,000 purporting to have been signed by Madho Ram. The defendants had previously received a letter of advice also purporting to have been signed by Madho Ram. The defendants debited the plaintiffs with the payment.

The plaintiffs repudiated the draft as a forgery and sued to recover Rs. 10,000 from the defendants.

The defendants denied that the draft was a forgery. In the alternative they submitted that the forged draft had been paid by them owing to the negligence of the plaintiffs, and that the latter were not entitled to recover the amount of the draft from them.

Held, that it was probable that the draft was one left by Madho Ram when acting as manager of the Lahore office of the plaintiffs, but that the plaintiffs were not estopped from contending that the draft was not the draft of the plaintiffs.

Held, further, that it was not incumbent on the plaintiffs to contemplate the perpetration of such a crime as forgery or theft and that the negligent act of Madho Ram was not the proximate cause of the draft being cashed by the defendants, and that the plaintiffs were therefore entitled to recover.

* Suit No. 828 of 1908. Appeal No. 11 of 1910.

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Société Générale v. *The Metropolitan Bank*(1), *Swan* v. *North British Australasian Company*(2), *Smith* v. *Prosser*(3) and *Baxendale* v. *Bennett*(4), followed.

THE plaintiffs were a Banking Company having their head office in Lahore and branch offices at Amritsar, Multan and other places. In the year 1905 the plaintiffs had no branch in Bombay. The defendants were also a Banking Company having their head office in England and branches at Bombay and other places.

In or about November 1904 the plaintiffs opened a current account in the books of the defendants at Bombay. It was agreed *(inter alia)* that the plaintiffs and their branches at Karachi, Amritsar, Ferozpore, Rawalpindi, Peshawar and Hoti should draw upon the said account.

A balance then standing to the account of the Amritsar branch of the plaintiffs and also certain other monies due from the defendants to the plaintiffs were transferred to the said current account and the usual pass-book was issued to the plaintiffs. The plaintiffs forwarded to the defendants at Bombay a list of the officers authorised to sign for the plaintiffs and specimen signatures of such officers, including the signature of the manager of the plaintiffs' Amritsar branch, Madho Ram. Madho Ram had previous to his appointment as manager of the Amritsar branch acted on occasion as the manager of the Lahore office of the plaintiffs. Thereafter the head office and the various branches of the plaintiffs operated on the said account by drawing drafts on the defendants in Bombay payable to order.

In the course of business between the plaintiffs and the defendants it was the custom of the plaintiffs when drawing a draft on the defendants to send to the defendants a letter of advice of such draft. The drafts were in each case signed by the manager and also by the accountant of the branch drawing them.

(1) (1873) 27 L. T. 849.
(2) (1863) 32 L. J. Exch. 273.
(3) [1907] 2 K. B. 735 at p. 753.
(4) (1878) 3 Q. B. D. 525.

It was the habit of the said Madho Ram when acting as manager of the plaintiffs' office at Lahore and afterwards as manager of the plaintiffs' branch at Amritsar to leave blank drafts and letters of advice signed by him with the accountant during temporary absences from the office to be filled in if needed. The said blank drafts and letters of advice were not destroyed on the return of Madho Ram, as they were stamped with a one anna stamp.

On or about the 2nd of October 1905 a letter of advice was received by the defendants in Bombay purporting to come from the Amritsar branch of the plaintiffs and to be signed by Madho Ram and by the accountant of that branch advising that a draft for Rs. 10,000 had been drawn by that branch in favour of one Nehalchand and on that date a draft for Rs. 10,000 purporting to be drawn by Madho Ram and to be also signed by the accountant in favour of Nehalchand or bearer was presented to the defendants for payment in Bombay and the amount of the draft was paid by the defendants. The defendants entered the payment of Rs. 10,000 in the plaintiffs' pass-book and sent the pass-book to the plaintiffs.

The plaintiffs repudiated the said draft and declared that the draft and the letter of advice were forgeries and filed the present suit to recover from the defendants the sum of Rs. 10,000 and interest.

The defendants in their written statement refused to admit that the draft and letter of advice were forgeries and in the alternative said that the payment of the draft if it were a forgery was caused by the plaintiffs' negligence.

The suit was heard by Russell, J. and at the trial evidence was given which made it appear probable that the draft and the letter of advice were documents which had been signed by Madho Ram in blank and left by him with the accountant on one of his absences from the office.

The learned Judge dismissed the plaintiffs' claim on the following grounds :—

The conclusion I have come to is that Exhibit B had been signed in blank by Madho Ram and used by the forgers for the purpose for which it was used.

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No doubt two men Divanchand and Ishwardas have been convicted and sentenced for forgery of the Multan draft as well as of Exhibit B. But it is obvious that the signature and the initials (other than the initials to the word "bearer,") to Exhibit B may be the genuine ones of Madho Ram and the rest of the document a forgery.

Supposing my conclusion to be well-founded, how does the matter stand in law? Looking at the duty imposed on a banker to obey the mandate of his customer on a document such as the one in question, there is, if I may so express it, a correlative duty whereby a customer may be told *sic utere manu tua ut alienum non lædas*, and when Madho Ram signed papers of the Bank which though not perhaps filled in in any particular were really bank drafts, he was acting in such a way as to injure the banker who honoured the draft when filled in. Mr. Raikes very ingeniously argued that the draft though signed by Madho Ram had no drawee or payee mentioned in it and therefore could not be described as a cheque, but in my opinion that, as I show hereafter, seems to be against his clients. Putting Madho Ram's name to it enabled any person into whose hands it fell to fill in the payee and drawee and made it a perilous thing for him to do. This seems to me to distinguish the present case from *Scholfield* v. *Earl of Londesborough*(1) and *Colonial Bank of Australasia, Limited* v. *Marshall*(2) for in those cases the instruments when drawn originally were complete and the subsequent additions unauthorised, whereas here the document was one which could be and was completed to the damnification of the defendants' bank. The principles applicable to the present case are those stated by Lord Halsbury in *Bank of England* v. *Vagliano Brothers*(3). "Now, apart from the particular machinery by which this transaction was effected, it will not be denied that a principal who has misled his agent into doing something on his behalf which the agent has honestly done, would not be entitled to claim against the agent in respect of the act so done; and upon this branch of the case the question is whether the agent was misled into doing the act by the default of the principal: see *Ireland* v. *Livingston*(4)." That principle seems to me to be directly applicable to the present case, for there the agent was misled into paying the draft by the default of the principal in drawing it in blank. But here I hold that the plaintiffs' agent by a voluntary act of his own in signing blank document gave credit and the certification of its genuineness when filled up. Here the very thing which the defendants did was induced by the default of the plaintiffs' agent, and it will be noticed that Lord Halsbury says that he designedly avoided calling these documents, bills of exchange because they were nothing of the sort, but if they had got into the hands of an innocent owner of value without notice Vagliano would have undoubtedly been responsible for them for he had given them a genuineness as against himself by accepting them. So here Madho Ram gave Exhibit B genuineness as against the plaintiffs by his signature thereto. Again

(1) [1896] A. C. 514.
(2) [1906] A. C. 559.
(3) [1891] A. C. 107 at p. 114.
(4) (1871) L. R. 5 H. L. 395.

Lord Macnaghten, at page 159, says: "If A. employs B. on his behalf to deal with articles of a certain description in a particular way, and then A., through inadvertance or otherwise, introduces among the articles with which B. is to deal a dangerous counterfeit not distinguishable in appearance from its companions, I cannot doubt that A. is bound to indemnify B. against any loss resulting from his dealing with the counterfeit as if it were a genuine article within the scope of his employment. And it cannot, I think, make any difference that B. is bound by the terms of his employment to bear every risk incident to his dealing with the genuine article." In the present case Madho Ram introduced amongst the drafts with which the defendants had to deal a document dangerous to the defendants because the body of it could be filled in above his genuine signature to their detriment.

After having referred to all the cases which were mentioned to me I am of opinion that this statement in Hart on Banking, 2nd Edition, page 293, is correct, where he says: "As between a customer and his banker who is his mandatory, a duty on the part of the customer arises directly out of contractual relations subsisting between them to take care that any cheque which he should buy is not in such a form as to offer facilities for an alteration which would mislead the banker if reasonably vigilant." Substitute for the words "for an alteration" the words "for being filled up" and you have the present case. Mr. Raikes argued that *Young* v. *Grote*(1) had been overruled by reason of the decisions in *Scholfield* v. *Earl of Londesborough*(2) and *Colonial Bank of Australasia, Limited* v. *Marshall*(3) and referred to a passage in the Laws of England to that effect. But in Hart on Banking, 2nd Edition, *Young* v. *Grote*(1) is certainly not treated as overruled, and however much it may have been criticised I do not feel justified in saying that it has been overruled, and moreover it appears to me that there must be a distinction between drawing an instrument in blank and putting your signature to a document which is capable of being converted into an instrument. Madho Ram when he signed Exhibit B on the plaintiffs' paper must have known that he was authorising any person into whose hands that paper came to fill it up so as to make it an instrument. In *Young* v. *Grote*(1), *Scholfield* v. *Earl of Londesborough*(2) and *Colonial Bank* v. *Marshall*(3), the documents were instruments when they left the hands of the drawer or acceptor, and he need not, it may be, have been obliged to take precautions against any alteration of the instrument he had prepared (of course in *Young* v. *Grote*(1) the husband was held liable because he entrusted blank cheques to his wife) and this is what I think the remarks of Lindley, L. J., in *Adelphi Bank* v. *Edwards*(4) quoted in *Scholfield's case* at page 540 *et seq.*, must be limited to, when he says "we cannot say there was negligence here, unless we go the whole length of saying that it is negligence to sign a negotiable instrument, so that somebody else can tamper with it. I cannot go that length. I think it would be wrong." That it seems to me is a very different thing from saying that it is negligence to sign a document which somebody else may convert into a

(1) (1827) 4 Bing. 253.
(2) [1896] A. C. 514.
(3) [1906] A. C. 559.
(4) (1882) 26 Sol. J. 360.

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negotiable instrument for the honouring of which the banker is to be held liable. So again when Bowen, L. J., said in *Le Lievre* v. *Gould*(1) : "The Law of England . . . does not consider that what a man writes on paper is like a gun or other dangerous instrument, and, unless he intended to deceive, the law does not, in the absence of contract, hold him responsible for drawing his certificate carelessly." He is there alluding to the drawing of an instrument, not to the drawing of a document which somebody else is, by the form of it and in consequence of the signature, capable of converting into an instrument. Madho Ram by signing his name to a blank bank form enabled any person into whose hands it fell to make it a gun with which to shoot the defendants' bank. Again in the *Colonial Bank case* the Privy Council at page 567 in discussing *Scholfield's case* say, "It was recognized that there is or may be a duty on the part of the drawer of a cheque towards his banker which does not exist on the part of the acceptor of a bill towards the holder. It was recognized that 'if the . . . customer by any act of his has induced the banker to act upon the document by his act, or neglect of some act usual in the course of dealing between them, it is quite intelligible that he should not be permitted to set up his own act or neglect to the prejudice of the banker whom he has thus misled, or by neglect permitted to be misled.' "

To my mind the act usual in the course of dealing between the plaintiffs and the defendants which Madho Ram neglected, was to fill up drafts in the usual way. The act of commission on the part of Madho Ram was to sign his name upon the bank's paper which any person could fill up for any amount. I can imagine that bankers in the City of London would get a shock if they were told that they were to be held liable on drafts signed wholly in blank by country managers and filled up fraudulently.

The plaintiffs appealed.

Raikes, with *Inverarity*, for the appellants :—(After dealing with issues of fact) the draft did not come out of any known book used at the Amritsar branch. The document when signed in blank was not addressed to any specific banker. It was not a cheque or a bill of exchange.

The defendants could only plead a discharge if they showed that the plaintiffs were estopped from denying an order to pay which has not been pleaded.

Strangman (Advocate General), with *Lowndes*, for the respondents.

Raikes replies.

Cur. Adv. Vult.

March 6.

SCOTT, C. J. :—The plaintiffs are a limited company carrying on business as bankers in various places in Northern India and

(1) [1893] 1 Q. B. 491 at p. 502.

having its principal office at Lahore. The defendants carry on business as bankers in Bombay.

In the month of November 1904 the manager of the plaintiffs' head office at Lahore made arrangements for the transfer to the defendants' Bank of the plaintiffs' balance with the Chartered Bank of India to be credited to the account of the plaintiffs with the defendants and to be drawn on by the plaintiffs' branches at Lahore, Karachi, Amritsar, Ferozepore, Rawalpindi, Peshawar and Hoti. At this time the Amritsar branch alone of the plaintiffs' offices had already a current deposit account with the defendants and it was arranged that the amount due at the foot of that account should be transferred to the general account opened in favour of the plaintiffs, so that there should be only one account of the plaintiffs' Bank with the defendants.

The plaintiffs used to supply to their various branches, books containing engraved forms of drafts with counterfoils for the same, similar to those contained in the book Exhibit G. The forms were all engraved as dated from Lahore, and it was the practice in branch offices when issuing drafts to strike out the word "Lahore" and substitute with a rubber stamp the name of the place in which the branch office was situate and the names of the drawees were filled in the drafts as the occasion might require.

In the month of May 1905, correspondence commenced between the defendants and the plaintiffs regarding the endorsements upon "Order Cheques" drawn by the plaintiffs on the defendants. The defendants complained that Order Cheques frequently came from the plaintiffs and their branches with endorsements in various languages unknown, and therefore asked for a letter of indemnity holding them free from all responsibility in the event of passing such cheques without any regular endorsements.

On the 6th of June 1905, the defendants gave notice that unless a letter of indemnity was returned duly signed, they would refuse all cheques endorsed in languages unknown to them.

In consequence of this decision, various cheques of the plaintiffs' branches were dishonoured by the defendants and

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eventually on the 6th of October 1905 the plaintiffs gave the indemnity required by the defendants, undertaking to hold them harmless from all consequences with respect to Order Cheques wrongly endorsed in languages unknown to the defendants, in consideration of the defendants allowing the plaintiffs and all their branches to draw Order Cheques.

On an examination of their pass-book relating to their account with the defendants on or about the 17th of October 1905, the plaintiffs discovered that they had been debited by the defendants with a sum of Rs. 10,000 paid by the defendants on the 2nd of October as being the amount of Amritsar draft No. 16 of 1905. The Amritsar manager of the plaintiffs named Madho Ram on being communicated with stated that no such draft had been issued from his branch. Correspondence then ensued, as a result of which the draft No. 16 and an advice note purporting to relate thereto were sent to Lahore for inspection by the plaintiffs. The plaintiffs then wrote a letter, dated the 2nd of December 1905, in which they stated that Madho Ram, the manager of the Amritsar branch, did not admit that the documents in question bore his signature and that it had been discovered in the course of an enquiry into another case of fraud committed at Multan that Madho Ram having gone on leave had left some blank advices and drafts duly signed with the accountant who made them over to the daftari and that the manager on his return was told that the blank advices had been destroyed.

On the 9th of February 1906, in acknowledging the correctness of the balance of their current account as advised by the defendants, the plaintiffs added a note to the admission in the following terms, "Subject to our claim as to the draft of Rs. 10,000 cashed fraudulently on the 2nd of October 1905 which is under Police investigation," and on the 1st of March 1906 they informed the defendants' Bank that they were unable to sign any acknowledgment of the balance without this qualification.

On the 29th of September 1908, the plaintiffs filed this suit against the defendants claiming payment of the sum of Rs.

10,000 with interest on the ground that their current account had been improperly debited with that sum. The suit is thus for money had and received by the defendants for the use of the plaintiffs.

The defendants rely upon the signatures purporting to be those of Madho Ram, the Amritsar manager, appearing upon the draft for Rs. 10,000, Exhibit B, and upon the advice note, Exhibit A. The signatures admittedly bear an extraordinary resemblance to the genuine signatures of Madho Ram and he has himself admitted that he would have been deceived by them. I also infer from the correspondence already referred to that the plaintiffs themselves were doubtful whether the documents in question were not signed by Madho Ram. The learned Judge in the Court below has held that the draft, Exhibit B, was signed by Madho Ram on the occasion of one of his departures from Amritsar during the period of his managership there and that the draft had subsequently been filled in by forgers, the forgers being, in his opinion, two men Devanchand and Ishwardas who were committed and sentenced for forgery of another draft of the plaintiffs' Bank. The learned Judge being of opinion that the plaintiffs had been guilty of negligence in the discharge of their duty to the defendants which arose out of the relation of banker and customer, passed a decree in favour of the defendants dismissing the suit.

Neither the pleadings nor the issues directly raise the question of negligence in respect of a blank draft bearing a genuine signature but both in the lower and in this Court much of the evidence and arguments were devoted to this question.

I am of opinion that the learned Judge came to the right conclusion in holding that the signature upon the draft, Exhibit B, was the genuine signature of Madho Ram, for the considerations, to which the plaintiffs' expert Mr. Hardless has called attention, do not raise any serious doubt in my mind upon the point. The fact, however, that the genuine signature of Madho Ram appears upon a draft which *ex hypothesi* was blank at the time the signature was affixed, is not, I think, for reasons which I will state later on, sufficient of itself to prejudice

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the plaintiffs' claim. We must be convinced that there was some negligence on the part of their servants which was the proximate cause of the cashing of the draft by the defendants.

It is, therefore, necessary to scrutinize the evidence in order to try and arrive at some certain conclusion as to when Exhibit B was signed by Madho Ram. It is admitted that the draft is made out upon one of the plaintiffs' draft forms. A comparison however of Exhibit B with the counterfoils in the books of forms in use consecutively from 1903 to 1906 at the Amritsar branch, and with such of the drafts appertaining thereto as have been produced convinces me that Exhibit B did not come from one of those books.

Madho Ram states that he has been in the plaintiffs' service for eight years altogether and that he has been the manager at Amritsar since the 24th of April 1904.

We find that from the 7th of May in that year up to October 1905 he has initialled almost all the counterfoils of drafts issued from the Amritsar branch with the initials "M. R. M. C." He states that before he went to Amritsar, he had occasionally acted as manager at Lahore, when the Lahore manager was ill; that on one occasion he was the manager for one and a half months in 1903 or 1904 and that once or twice he signed the Bank's drafts in blank at Lahore when he was acting as manager and had to go to Court.

We have, therefore, examined the counterfoils of the only Lahore draft form book which has been produced, namely, Exhibit 14, for the purpose of seeing whether it throws any light on the question which we have to determine. The counterfoils in that book show that every counterfoil existing from the 19th of March to the 21st of April 1904 is initialled by Madho Ram, except in the case of a counterfoil bearing date the 30th of March. An examination of that book also discloses the fact that a counterfoil of a draft has been torn out from a place between the counterfoils dated the 15th of April and the 16th of April 1904, and Exhibit B is found to be of the same quality of paper as the counterfoils in that book and to fit exactly on to those counterfoils not only in respect of the

width of the paper but also in the matter of ornamental scroll work. This is the only case we have been able to find of a counterfoil which has been torn out during a period when Madho Ram was initialling the counterfoils in the books produced.

I will now consider whether there is any other reason for supposing that the draft, Exhibit B, may have been signed by Madho Ram at Lahore. In the first place it is to be noted that the ink of the signature is very faint, much fainter than the ink of the other manuscript portions of the draft. This would be consistent with the theory that Madho Ram's signature was affixed early in 1904, while the fraudulent filling in of the other portions of the draft was not effected until the latter part of 1905. It is also to be noted that the year date on Exhibit B is indicated by a " 5 " which has obviously been altered from some other figure by a person who was anxious to destroy all evidence of the original figure. This would indicate that the original year date was not inserted in 1905. In this connection it is also to be noticed that on the counterfoils contained in the book, Exhibit 14, during the period when Madho Ram was initialling the counterfoils, (for example, on the counterfoil of the 16th of April 1904), the figure 4 is written in such a way as to suggest the possibility of its alteration into a 5 by a thickening of the lines and the addition of a tail similar to that in the 5 which we find in Exhibit B. This suggests the inference that Madho Ram, at the time of affixing his signature in blank, took the precaution of adding the year date.

Another material fact in this connection is that it is proved that the fraudulent endorsement upon Exhibt B in the name of an unknown person Nehalchand is in the handwriting of Divanchand who was a clerk in the plaintiffs' Bank at Lahore at the time when Madho Ram was engaged there as an accountant and who subsequently became an accountant in the Multan branch of the plaintiffs' Bank and was convicted of forgery in respect of a draft drawn upon the Multan branch dated the 25th of October 1905 and purporting to be signed by Madho

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Ram. There is no doubt cogent evidence that Exhibit B was prepared for issue by some person or persons who had knowledge of the transactions of the Amritsar branch, for it bears the serial No. 16 of 1905 which is the proper serial number according to the Amritsar Draft Issue Register for a draft drawn upon the defendants on the 29th of September 1905; it is also stamped with a rubber stamp "Amritsar" which must have been provided by some one who had access to the stamps used at that branch. The conclusion, however, that employees of the Lahore and Amritsar branches were conspiring together, raises no difficulty, for, as is well-known, Amritsar is but at a short distance from Lahore and within easy reach by train.

I am satisfied that the draft Exhibit B was never prepared for issue by Madho Ram, because I think it is quite clear that the initials appearing in various places upon that draft are forgeries. We have some hundreds of Madho Ram's genuine initials for comparison and we have noticed no case but one in which his initials do not conclude with a continuing back stroke or flourish which the writer of the initials upon Exhibit B has failed to reproduce successfully. If the draft form had been signed for issue from Lahore in April 1904 there would be no alterations which would require initialling. The falsity of the initials, therefore, supports the conclusion that the form B was signed at Lahore before 1905.

I also think that it is safe to conclude that the draft was prepared for issue at a time when it was known to the servants of the plaintiffs that the defendants had refused to honour any order draft with an endorsement in a language unknown to them unless they received a general indemnity in respect of such drafts from the plaintiffs. That indemnity, as we have seen, was not given until the 6th of October. I, therefore, infer that Exhibit B was prepared for issue some time between May and October 1905, while the correspondence upon the subject of endorsements on order drafts was proceeding.

I now turn to the question of the genuineness of the advice note, Exhibit A, upon which the defendants rely.

It is in the following form :

Advice of drafts drawn by the Panjab National Bank, Limited.

Answered.

Received.

on the

Mercantile Bank of India, Limited, Bombay.

No.	Date.		In favour of	Amount.	Remarks.
	1905				
16/1905.	Sept.	29	Lala Nehal Chand	10,000	On Demand
			Rupees ten thousand only.		
					Pd. 2-10-05.

Note. This draft has been drawn payable to "bearer" which please pay accordingly.

Panjab National Bank, Ltd., Amritsar.
The 29th day of September 1905.

UTTAM CHAND, *Accountant.* K. MADHO RAM, *Manager.* M. C.

On its face it is a representation that draft No. 16 of the 29th September 1905 has been drawn by the plaintiffs on the defendants and should be paid. The signature of Madho Ram appearing upon it is admitted to be remarkably like his true signature. We have compared it with a very large number of his admitted signatures and except for the absence of the usual concluding back flourish we can detect no point in which it is not exactly similar to many of his other signatures. The concluding back flourish is so characteristic that a forger could not omit it; for example, in the initials on Exhibit B we have several lame attempts to imitate it. We have discovered

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in the draft register p. 13 (Exhibit 4) an instance in which the concluding 'C' wants the flourish and presents an appearance exactly similar to the concluding 'C' of Madho Ram's signature on Exhibit A. In the absence then of any mark of a certain differentiation and in view of the admissions of Madho Ram, the evidence of the defendants' witnesses and the clumsiness of the forgery of Uttamchand's name in Exhibit A and of the initials in Exhibit B, the conclusion of the Court is that Madho Ram did put his signature to the paper Exhibit A.

The next question is, when did he put his signature on that paper?

It is clearly established that when Madho Ram signed draft forms in blank he would have to sign also blank letters of advice as the letter of advice always goes out with the draft. Anandrao Ganpatrao, the defendants' ledger clerk, illustrates the importance of this practice in describing the procedure when Exhibit B was presented at the defendants' Bank. He says:

"In ordinary course it would be brought to me before it was paid. My duty was to see the signatures and compare them with the specimen signatures on our office record. I put the draft in my ledger and enter the folio; *then I see if we have got advice from the Panjab Bank.*"

It is, I think, established that Exhibit A is not one of the blank advice notes signed by Madho Ram when he went on leave early in October 1905. He says he signed them at the last moment and was working in office till the 3rd October. The latter statement is proved from the plaintiffs' books. The draft Exhibit B was cashed by the plaintiffs in Bombay on the 2nd October and they had already received the advice note Exhibit A. I infer therefrom that it was filled in and posted in the Panjab prior to the 1st of October. The witness Uttamchand, who was the plaintiffs' accountant at Amritsar in September and October 1905 and has been dismissed from their service, states that when Madho Ram went on leave in October 1905 he left with him four drafts in a book which were signed in blank. Besides drafts he also left four advice forms which he had signed. None of the drafts were used during his absence. When he returned he asked if they had been used. Uttamchand said,

"not any," and handed back the drafts. Madho Ram also asked for the letters of advice and Uttamchand said they had been destroyed. This confirms the statement of Madho Ram that he inquired for the advice notes but was told by his subordinates they had been destroyed. He says his practice was always to ask for the blank advice notes and drafts on his return from a temporary absence.

I have already indicated my opinion that he did not recover a blank draft form signed by him at Lahore in April 1904. He may have omitted to do so on account of his impending departure for Amritsar in that month to take up the office of manager there. It is equally probable that he omitted to recover the advice note which must according to the usual practice have been signed in blank to meet the occasion of his temporary absence in April. This appears to me the most probable explanation of the existence of A and B in a blank state except for Madho Ram's signatures and capable of being abstracted and used by fraudulent persons. Uttamchand has shown that the fraudulent completion of Exhibits A and B may have been effected at the Lahore office. Employees in the Lahore office would know the number of the last preceding Amritsar draft on the defendants' Bank and would know perhaps better than those in Amritsar the position which the question of Order drafts on the defendants likely to bear vernacular endorsements had arrived at at the end of September 1905.

To summarise my conclusions of fact, I find that Exhibit B was not signed by Madho Ram, when he was the manager at Amritsar but that it and probably the advice note Exhibit A were signed by him at some earlier date than the 24th of April 1904, when he took up the position of manager at Amritsar; that Exhibits A and B were probably signed on or about the 15th of April 1904 when he was employed in the Bank at Lahore (Exhibit B being dated 1904) and left at the Bank to be filled in and issued by his subordinates in case of need during his temporary absence; that it was fraudulently filled in by Divanchand, possibly in concert with servants of the

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Bank at Lahore and Amritsar; that the signed draft form must have come into the possession of Divanchand by theft or fraud and that Madho Ram never gave any authority to anyone to prepare the blank form signed by him for issue as a draft of the Amritsar branch or of the year 1905.

I will now consider whether upon the facts found the plaintiffs are estopped from contending that the completed draft presented to the defendants was not the draft of the plaintiffs.

In deciding the case we must apply the law contained in section 115 of the Indian Evidence Act with the aid of such English cases as are not inconsistent with it. Have then the plaintiffs through their agent Madho Ram by declaration, act or omission intentionally caused or permitted the defendants to believe that a draft in terms of Exhibit B had been drawn by Madho Ram on the defendants?

I do not think in view of the evidence that the draft forms when signed in blank were left with the accountant under lock and key and that Madho Ram as a rule asked for the documents which had been signed in blank on his return to duty and in the absence of any suggestion that any similar case of fraud had occurred in connection with such documents prior to September 1905, that the plaintiffs can be held to have authorised any negligence in practice which was likely to result in a fraud such as has occurred.

It was not incumbent upon the plaintiffs or Madho Ram as their agent to contemplate the perpetration of such a fraud or to guard against it. As observed by Bovill, C. J., in *Société Générale* v. *The Metropolitan Bank*[1]—

"Persons are not to be supposed to commit forgery, and the protection against such a crime is the law of the land, not the vigilance of parties in excluding all possibility of committing it."

The learned Judge in the lower Court held that the principles applicable to the present case are those stated by Lord Halsbury in *Bank of England* v. *Vagliano Brothers*[2], *viz.*, that a principal who has misled his agent into doing something on

(1) (1873) 27 L. T. 849 at p. 856. (2) [1891] A. C. 107 at p. 114.

his behalf which the agent has honestly done would not be entitled to claim against the agent in respect of the act so done. In *Vagliano's case*, the Bank of England were agents who had, by special agreement, undertaken the duty of paying their principal's acceptances, and the acceptances by Vagliano introduced fraudulent counterfeits for payment which Vagliano ought to have detected. There was, therefore, negligence in the transaction itself which was the proximate cause of the loss; there was an intention in Vagliano to induce the belief and action of the Bank with regard to those very documents. In the present case the facts do not show that the negligent act alleged was the proximate cause of the loss. The act of Madho Ram in signing a blank form with intent that it might be used in case of need for a Lahore draft upon any of those who, in April 1904, were bound to honour the plaintiffs' Lahore drafts, does not disclose any intention that the defendants should believe anything or take any action; it creates a position similar to that which arose in *Swan* v. *North British Australasian Company*[1], where a blank transfer form signed by the plaintiff for the transfer of shares in one Company but fraudulently filled in and used by his broker for transfer of the plaintiff's shares in another Company was held not to be the proximate cause of the transfer of the shares by that other Company so as to estop the plaintiff from contending that he had never transferred his shares. There are, however, dicta of certain Judges in that case (Blackburn, J., Byles, J., and Cockburn, C. J.) which suggest that in the case of negotiable instruments a more stringent rule is enforceable against the maker. It is to be observed that Chapter VIII of the Indian Evidence Act which deals with estoppels recognises no special rule for negotiable instruments beyond that laid down in section 117 with regard to the acceptor of a Bill of Exchange, a position which Madho Ram does not occupy in relation to Exhibit B. The English Law upon the point has been summarised by Fletcher Moulton, L. J., in *Smith* v. *Prosser*[2], as follows:

(1) (1863) 32 L. J. Ex. 273. (2) [1907] 2 K. B. 735 at p. 753.

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"Both the common law and the statute realised the possibility of two rival dangers—on the one hand, a person who did nothing more than sign a blank stamped paper might find himself in the position of being the maker of a bill or note; on the other hand, a man might issue an incomplete bill or note and place it in the hands of an agent with a limited authority to fill it up, and the agent might fill it up without due regard to the limitations of his authority and put it in circulation and thereby injure innocent persons. They therefore drew the line as regards the protection of third parties in the following very reasonable and intelligible way: if the signer intended it to become a bill, it was for him to see that it was issued in accordance with his intentions, and if he did not do this, third parties would not be affected; on the other hand, if he did not intend it to become a bill, there would be no such duty incumbent upon him, and he would be in the same position as if he had merely signed it as an autograph. There would in that case be no *animus emittendi*, and he would therefore not be liable for the act of a bailee who turned the document into a negotiable instrument."

This is not a case in which at the date of the signature there was any relation of banker and customer subsisting between the plaintiffs' Lahore branch and the defendants. It is, therefore, unnecessary to consider whether as between banker and customer the statement of the law by Fletcher Moulton, L. J., requires any qualification. Here I infer that there was never any intention that the form B bearing Madho Ram's signature should be issued as a draft from any place but Lahore, and we know that the defendants had only been authorised at a later date to honour drafts bearing Madho Ram's signature if drawn by the Amritsar branch. This circumstance was relied upon by counsel for the plaintiffs who argued if the Court held that Madho Ram signed Exhibit B while manager at Lahore, the relation of banker and customer not being then established between plaintiffs and defendants, the case would be governed by the decisions in *Baxendale* v. *Bennett*[1] and *Smith* v. *Prosser*[2]. *Smith* v. *Prosser*[2] establishes that the signing of a paper in blank and its delivery to an agent with instructions to fill it in and negotiate it under certain specified conditions will not estop the signer from repudiating liability if the agent in the absence of the specified conditions fraudulently fills it in and negotiates it. *Baxendale* v. *Bennett*[1] establishes that the preservation by the acceptor without cancellation of a

(1) (1873) 3 Q. B. D. 525. (2) [1907] 2 K. B. 735.

blank acceptance after the occasion for its use has passed will not render him liable if it is stolen, filled in and negotiated fraudulently. I infer also from the remarks of Lord Halsbury and Lord Shand in *Clutton* v. *Attenborough & Son*[1] that even in the case of a completed cheque the *animus emittendi* must be shown in order to bring home liability to the maker.

The facts which I hold to be established do not bring this case within the estoppel which has been held to arise where the maker of a completed instrument completes it in a negligent manner and voluntarily parts with it and it is fraudulently altered by the person to whom it is handed. *Young* v. *Grote*[2], which is the best known case in this connection, was much relied upon by counsel for the respondents, but the facts found do not admit of its application any more than the application of section 89 of the Negotiable Instruments Act which appears to be based in part upon *Young* v. *Grote*[2]. Exhibit B had not been made into a cheque by Madho Ram nor had he voluntarily parted with it in order that it might be made into a cheque. *Ingham* v. *Primrose*[3], also relied upon by counsel for the respondents, does not assist their case, for, as explained by Lord Watson in *Scholfield* v. *Earl of Londesborough*[4], the acceptor there was found liable not because he had signed a bill which facilitated fraud but upon the obvious consideration that he had negligently put into circulation a negotiable instrument which had not been properly cancelled. It is most unfortunate that the documents Exhibits A and B were left uncancelled, but I can find no warrant in law for holding the plaintiffs estopped from asserting the true facts because eighteen months after Madho Ram's departure from Lahore the documents were fraudulently completed by Divanchand and presented to the defendants as documents issued by Madho Ram at Amritsar.

We reverse the decree of the lower Court and give judgment for the plaintiffs for Rs. 10,000 with interest at 6 per cent. per annum from the 2nd of October 1905 and costs.

(1) [1897] A. C. 90.
(2) (1827) 4 Bing. 253.
(3) (1859) 7 C. B. (N. S.) 82.
(4) [1896] A. C. 514 at p. 538.

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BATCHELOR, J. :—In the suit out of which this appeal arises the plaintiff Bank claimed a sum of Rs. 10,000 which had been paid out by the defendant Bank on a draft purporting to bear the signature of one Madho Ram, the plaintiffs' manager. The plaintiffs' case was that the draft was a forgery, and that the defendants were not entitled to debit their customers, the plaintiffs, with the sum paid out in consequence of the forgery.

The defendants in their written statement denied that the draft in question was a forgery and set out their belief that the manager Madho Ram's signature on it was his genuine signature; they denied that they had been guilty of any negligence, and contended that, even if Madho Ram's signature was forged, they were entitled to debit the plaintiffs with the payment, the making of which was wholly due to the plaintiffs' negligence.

On the issues at the trial the learned Judge held that the plaintiffs had failed to prove that the draft for Rs. 10,000 did not bear Madho Ram's genuine signature; that, having regard to the signatures and wording appearing on the draft, the defendants were justified in making payment of it to bearer; and that in making such payment the defendants did not act without proper care and caution, and were not guilty of negligence. On these findings the learned Judge dismissed the suit with costs, and from that decree the plaintiffs bring the present appeal.

It will be convenient first to ascertain what the facts are with reference to the preparation of the draft in question, and then to consider what is the law applicable to that state of facts.

The first and principal question of fact is whether the manager Madho Ram's signature is genuine or forged, and on this point I cannot doubt but that the learned Judge was right in finding that the signature is genuine. As to the degree of its resemblance to a genuine signature it is enough to refer to Madho Ram's own admission that he himself would have paid on such a signature. Upon careful examination in a photo-

graphic enlargement the writing is free and flowing, without any discernible trace of tremor, hesitation or fabrication. There is no difficulty in supposing that the signature is genuine, for Madho Ram has admitted that it was not unusual for him, when about to absent himself from office for a few days, to leave blank signed drafts with the accountant in order that they might be duly completed if need arose during Madho Ram's absence. The defendants' case is that the draft now in suit, Exhibit B, was one of the drafts so signed and left behind by Madho Ram, who neglected to recover or destroy it, and that it was afterwards stolen and used by the forgers who filled in the other entries and secured payment from the defendants: that is the case which the learned Judge below has held proved, and I agree with him in this finding. The principal witness called by the plaintiffs on this point was the handwriting expert, Mr. Hardless, but his evidence appears to me to depend so much on abstract and somewhat far-fetched theory that it would not be safe to give effect to his conclusions. It is plain, moreover, that the theory of a tracing, on which alone he took his stand at the trial, did not occur to him till a comparatively late stage in his investigations, and was even then suggested to him by other persons; and in my opinion his evidence generally has been very materially shaken in cross-examination. On the other hand we have the evidence of Messrs. Marshall and Johnston, who depose that the signature is, in their opinion, genuine, and whose testimony seems entitled to all the greater credit that these gentlemen are not mere theorists, but practical banking men, upon whose discrimination and sagacity in such matters large sums of money do in daily practice depend. Further, among the correspondence put in as Exhibit E, will be found plaintiffs' letter to the defendants, dated 2nd December 1905, which may be taken as the first statement by the plaintiffs of their case. It is, I think, impossible to read that letter without recognising that it was the plaintiffs themselves who first suggested the theory that the origin of the fraud lay in the fact that draft forms bearing his genuine signature were sometimes left by Madho Ram in the office. It may also be observed that Madho

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Ram's signature on Exhibit B is written in much fainter ink than the other, that is, the forged entries in the draft; but if the signature had been forged, one would have expected the forgery to correspond in appearance with the other writing on the draft.

On the whole, then, I am satisfied that the onus which on this point admittedly lay on the plaintiffs has not been discharged; in other words, I find that Madho Ram's signature on Exhibit B is his genuine signature.

It remains to consider the circumstances in which Exhibit B was signed by Madho Ram and was afterwards fraudulently completed. The draft is written on the plaintiff Bank's usual printed form, the address "Lahore" being struck out and replaced by the stamp "Amritsar." Madho Ram was manager of the plaintiffs' Amritsar branch from 24th April 1904, and before that date was at the Lahore office where he acted as manager from time to time. The plaintiffs' account with the defendant Bank was opened in November 1904. The fact to be ascertained is when and where Madho Ram signed Exhibit B, which was presented at the defendants' Bank and cashed on 3rd October 1905; was it signed at Amritsar while Madho Ram was manager there, or was it signed at Lahore prior to the establishment of business relations between the two litigating Banks? I am of opinion on the evidence that it was signed by Madho Ram some time in April 1904 when he was acting as manager of the Lahore office. We have in evidence Exhibit A 9, Exhibit 12 and Exhibit G which are the counterfoils of the draft form books of the Amritsar branch running from 19th June 1903 to 16th August 1905. Exhibit A 9 has the hundred complete counterfoils. In Exhibit 12 certainly one counterfoil is missing, but Exhibits C 1 to C 13 show the kind of printing and paper used in these drafts, and it is plain that Exhibit B was not taken from this book, Exhibit 12. It is similarly plain that it could not have come from the book, Exhibit G, where the forms are visibly distinct from the form of Exhibit B. These are the only relevant draft form books of the Amritsar office, and I think the plaintiffs have succeeded in proving that

Exhibit B cannot have been abstracted from any of them. As I understood the argument, this proposition was not seriously questioned by the Advocate General, who, however, strongly insisted that, since Exhibit B indisputably came from some book of the plaintiffs, it was the plaintiffs' duty to produce the book of origin, as indeed Madho Ram undertook to produce it; and that, this not having been consciously done, every presumption should be made against the plaintiffs. It may be that at the trial the question of the source of Exhibit B was somewhat lost sight of, but the plaintiffs produced all the books called for and nothing occurred which could debar them now from tracing its origin to any of the books on the record. I entirely agree with the Chief Justice that the real origin of Exhibit B is the Lahore draft form book for April 1904. This book has a counterfoil missing, and the forms correspond with Exhibit B in every detail, the size and texture of the paper, the character of the scroll and printing, and so on; nor is it suggested that any such correspondence can be found between Exhibit B and any other series of forms. This view receives much support from the fact that in Exhibit B, the date which now appears as "1905" was almost certainly at first written "1904," and the precise kind of "4" which has been converted into a "5" appears also in other counterfoils in this book. Finally, there is good reason for thinking that the word "Amritsar" stamped on Exhibit B was not impressed with the stamp actually in use at the Amritsar office.

As to Madho Ram's initials on Exhibit B, I think that they must be pronounced forgeries. The learned Judge below thought that the initials against "bearer" were forged, and that opinion seems beyond all reasonable criticism; yet if the initials against "bearer" are false, all the probabilities suggest that the other initials are also false.

As to the letter of advice, Exhibit A, it played but very little part in the argument before us. We have, however, subjected it to careful scrutiny and examination, and I am satisfied that it bears the genuine signature of Madho Ram. Upon this finding the probabilities are, upon the evidence on the record that Exhibit A was signed by Madho Ram and left behind at

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the same time as Exhibit B; this is the view suggested not only by the oral testimony, but by the internal evidence of the appearance of Exhibits A and B.

For the foregoing reasons I find the relevant facts as follows. In November 1904 the plaintiffs' Bank became the customer of the defendant Bank. In April 1904 Madho Ram, while manager of the plaintiffs' Bank at Lahore, signed the letter of advice, Exhibit A, and the printed form, Exhibit B, on some occasion when he was about to absent himself from his office for a few days; he left Exhibits A and B so signed but in all other respects incomplete, with some subordinate official at the Lahore office in order that they might be filled in and issued if a customer should call and require a draft during Madho Ram's temporary absence; on his return to duty Madho Ram neglected to recover or destroy the signed draft and letter, which were afterwards dishonestly abstracted and used for the purpose of this fraud, the other manuscript entries in these documents being unauthorisedly made for the purposes of the fraud. The fraud succeeded, and on 3rd October 1905 the defendant Bank paid out the Rs. 10,000, which they now seek to debit to the plaintiffs.

The question is whether in this state of the facts the defendants are entitled to debit the plaintiffs' account with the payment. The learned Judge below answered this question in the defendants' favour on the ground of the negligence of the plaintiffs' agent, Madho Ram, in signing the blank form; he was of opinion that it was his negligence which misled the defendant Bank, and that the plaintiffs "should not be permitted to set up their own neglect to the prejudice of the banker whom they had thus misled or by neglect permitted to be misled." He relied mainly upon *Young* v. *Grote*[1] and certain observations in *Scholfield* v. *Earl of Londesborough*[2].

In favour of the learned Judge's view it must, I think, be held, in spite of some argument to the contrary, that the relation between the parties here is the relation of banker and customer. It is true that that relation was not established till

(1) (1827) 4 Bing. 253. (2) [1896] A. C. 514.

after Madho Ram had signed Exhibit B; in other words, when he signed that paper, he owed no duty to the defendant Bank. In my opinion, however, it is by no means clear that this circumstance alone would suffice to exonerate the plaintiffs if in other respects they are liable, and I, therefore, deal with the case as if the plaintiffs were the defendants' customers at the time when Exhibit B was signed. On that footing there appears to be no doubt on the authorities that some duty or other was owing by the customers or their agent, Madho Ram, to the defendants, though, so far as I can ascertain, the Courts have not defined the precise nature or scope of the duty: see, for instance, *Colonial Bank of Australasia, Limited* v. *Marshall*[1] and *Scholfield's case*[2]. That some degree of carelessness is imputable to Madho Ram is, I think, indisputable. Whatever may be thought of his action in leaving a blank signed draft behind in the office, he was certainly negligent in not recovering it or verifying it that it had been put to the lawful use for which it was intended. The question is whether this is sufficient to deprive the plaintiffs of their money. With some reluctance and some uncertainty, I think the correct answer is that it is not sufficient. In order that Madho Ram's negligence should have this effect in law, it would, in my view, be requisite, first, that the negligence should have occurred in the very transaction itself, not in some collateral act, and, secondly, that the negligence should have been the proximate cause of misleading the defendant Bank. That, I understand, is the limit of the rule in *Lickbarrow* v. *Mason*[3] that where one of two innocent parties must suffer for the fraud of a third, that party should suffer whose negligence facilitated the fraud: see the observations of Lord Coleridge in *Arnold* v. *Cheque Bank*[4], and the excerpt there quoted from the judgment of Blackburn, J., in *Swan* v. *North British Australasian Co.*[5]; in the same sense are Lord Cranworth's dicta in *Orr & Barber* v. *Union Bank of Scotland*[6] and *British Linen Co.* v. *Caledonian*

(1) [1906] A. C. 559.
[1896] A. C. 514.
(3) (1787) 2 T. R. 63.
(4) (1876) 1 C. P. D. 578 at pp. 587, 588.
(5) (1863) 32 L. J. Exch. 273.
(6) (1854) 1 Macq. 513 at pp. 522-3.

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Insurance Co.[1]. Lord Coleridge observed further, speaking of the Company, that "there could be no negligence in relying on the honesty of their servants in the discharge of their ordinary duty"; so here there would be no negligence in not foreseeing that the draft would be stolen and used for the purposes of fraud. As to *Young* v. *Grote*[2], where the customer's clerk had fraudulently altered a sum of £50 into £350, it is not easy to feel confident as to the degree of authority still retained by that decision, though Lord Watson in *Scholfield's case* held that it could, or might, be supported on the ratio that the customer in filling up the cheque through his wife, whom he had constituted his agent for that purpose, had failed in the duty which he owed to his banker by giving facilities for its fraudulent alteration. It is safer, therefore, to assume that the case is still of authority, though the point is not here of much practical importance since it is covered by section 89 of the Indian Negotiable Instruments Act: that section undoubtedly protects a banker against such a payment as was made in *Young's case*. But the fraudulent alteration of a cheque completed and issued is not the same thing as an inchoate instrument completed and issued by means of forgery. It is here, as I understand the matter, that the strength of the plaintiff's case lies. In my opinion the negligence of Madho Ram was not negligence in the actual transaction between the parties but in a matter collateral or antecedent to that transaction; and the proximate cause of the deception of the defendants was not Madho Ram's negligence, but the supervening forgery. In this connection I would refer to what was said by Lord Halsbury, L. C., in *Scholfield's case* in the passage where his Lordship professed his inability to understand why a particular form of fraud should have any different operation in giving validity to a forged instrument rather than other forms of fraud to which instruments are subject, and went on to instance the case where a man's unnecessarily exposed goods had been stolen, yet he could not be said to have lost his right to his property. (See pp. 521-2

(1) (1861) 4 Macq. 107 at p. 114. (2) (1827) 4 Bing. 253.

of the Report.) Another case illustrative of the same principle is *Baxendale* v. *Bennett*[1] where a blank acceptance, left by the defendant in his drawer, was afterwards stolen and negotiated to the plaintiff, who was a *bonâ fide* indorsee for value: it was held that the defendant was not liable on the bill. Bramwell, L. J., put his decision on the ground that there was no estoppel between the parties, and that the defendant's negligence was not the proximate cause of the fraud. The Lord Justice appealed to the principle, which is applicable here, that "every-one has a right to suppose that a crime will not be committed, and to act on that belief." And in commenting upon *Young* v. *Grote*[2] and *Ingham* v. *Primrose*[3] he points out that in those and similar cases "the alleged maker or acceptor . . . has voluntarily parted with the instrument; it has not been got from him by the commission of a crime." This, undoubtedly, is a distinction, and a real distinction. The defendant here has not voluntarily put into anyone's hands the means, or part of the means, for committing a crime." Brett, L. J.'s judgment went upon the ground that the defendant had never authorised the filling in of a drawer's name or issued the acceptance intending it to be used. So here Madho Ram was entitled to trust the honesty of the plaintiffs' other servants in the discharge of their ordinary duty; he was under no duty to provide against the commission of a crime; and he had never issued the instrument, but had only entrusted it to his subordinate for the purpose of being issued on certain conditions, which conditions were never in fact realised. In this respect the case resembles also *Smith* v. *Prosser*[4] where the defendant, returning to England from South Africa, left a blank signed promissory note with his agent, who was directed to put in on the market only if the defendant communicated with him to that effect; the agent, becoming false to his trust negotiated the note fraudulently for his own purposes. The Court of appeal held that the defendant was not liable. Vaughan Williams, L. J., said (p. 744): "If that note, being in that (incomplete) condi-

(1) (1878) 3 Q. B. D. 525.
(2) (1827) 4 Bing. 253.
(3) (1859) 7 C. B. (N. S.) 82.
(4) [1907] 2 K. B. 735.

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tion, had been handed to Telfer (the agent) . . . for the purpose of his making use of it, and for the purpose of its being issued as a negotiable instrument . . . the defendant would have been responsible to a *bonâ fide* holder for value ; " but the defendant was exonerated because the note was given to Telfer not for issue, but only for conditional issue on further instructions. The Lord Justice distinguished those cases where the instrument was parted with in complete state, and those cases where, being incomplete, it was delivered to an agent for the purpose of being negotiated. Fletcher Moulton, L. J., based his judgment on the facts that the agent had possession of the note merely as custodian, and that the defendant had never any '*animus emittendi*'. Both these judgments appear to me to be pertinent to the facts of the present case. The draft, after signature by the plaintiffs' agent, was left by him in an incomplete state, no drawee or payee being mentioned ; and the plaintiffs' agent had no '*animus emittendi*' except upon conditions which were never realised.

It was urged that this case and *Baxendale's case* had no present application because they were not cases, as this is a case, between banker and customer. This distinction, however, does not in my judgment, deprive the cited cases of their applicability though, no doubt, the relation between banker and customer is, for some purposes, materially different from the relation between the acceptor of a bill and a subsequent holder ; here also it must be remembered that Exhibit B, when signed and left by Madho Ram, was not a cheque, but a mere inchoate draft capable of being completed into a cheque. It may also be observed that *Colonial Bank of Australasia, Limited* v. *Marshall*[1], though a case between banker and customer, was decided by the Privy Council expressly on the principles laid down in *Scholfield* v. *Earl of Londesborough*[2]. In this last case Lord Halsbury, L. C., lays down the conditions upon which the banker is immune in these words (p. 523) : " If, to use Lord Cranworth's phraseology, the customer by any act of his has induced the banker to act upon the document by his act or

(1) [1906] A. C. 559. (2) [1896] A. C. 514.

neglect of some act usual in the course of dealing between them, it is quite intelligible that he should not be permitted to set up his own act or neglect to the prejudice of the banker whom he has thus misled, or by neglect permitted to be misled." It seems to me that, on the present facts, the defendants are beyond the reach of this principle, for Madho Ram was not guilty of any neglect of an act usual in the course of dealing between the parties, and the bankers were induced to pay, not directly by reason of any act or neglect of the plaintiffs, but by reason of the after-occurring forgery.

I feel that the case is a hard one for the defendants, who have acted throughout with due care and caution, while the plaintiffs, through their agent, have certainly been guilty of some carelessness; but the negligence is not, as I have said, sufficient, in my opinion, to render the plaintiffs liable upon this forged draft. I cannot regard it as amounting to negligence in Madho Ram that he signed the draft form and the letter of advice and left them with the accountant for conditional issue. As to the non-recovery of them, the evidence is that his habit was either to recover such documents after his return from leave or to accept the assurance of his subordinates that they had been issued or destroyed: in the particular case of Exhibits A and B it is probable, upon the evidence, that Madho Ram overlooked them on the occasion of his intending transfer from Lahore to Amritsar. The crime took place eighteen months later, and was, in my judgment, the only proximate cause of the deception practised on the defendants.

For these reasons I agree that the appeal should be allowed.

Attorneys for the appellants: *Messrs. Payne & Co.*

Attorneys for the respondents: *Messrs. Crawford, Brown & Co.*

Decree reversed.

H. S. C.