Williams, K.C.—Villiers Meagre—Van den Berg. Agents—Warren & Warren, for Edward Roberts & Lewis, Dowlais, Solicitors.

Counsel for the Respondents—Compston, K.C.—D. R. Thomas. Agents—Ullithorne, Currey, & Company, for D. W. Jones & Company, Merthyr Tydfil, Solicitors.

HOUSE OF LORDS.

Friday, June 21, 1918.

(Before the Lord Chancellor (Finlay), Viscount Haldane, Lords Shaw and Parmoor.)

LONDON JOINT STOCK BANK, LIMITED *v.* MACMILLAN & ARTHUR.

(On Appeal from the Court of Appeal in England.)

Mandate—Bank—Negligence—Customer—Cheque—Authority to Customer's Clerk to Fill in Words—Alteration of Amount—Duty of Customer to Take Precautions against Forgery.

The duty which a customer owes to a bank is to draw cheques with reasonable care to prevent forgery, and if, owing to neglect of this duty, forgery takes place, the customer is liable for the loss. If a customer signs a cheque in blank and leaves it to an agent to fill up, he is bound by the instrument as filled up by the agent.

Young v. *Grote*, 1827, 4 Bing. 253, *approved and followed; Scholfield* v. *Earl of Londesborough*, 1896 A.C. 514, *distinguished;* Decision of the Court of Appeal, 1917, 2 K.B. 439, *reversed; Colonial Bank of Australasia* v. *Marshall*, 1906 A.C. 559, *considered.*

Appeal by the bank from an order of the Court of Appeal, reported 1917 2 K.B. 439, which affirmed a judgment of Sankey, J., reported 1917 1 K.B. 363, who tried the action in the Commercial List without a jury.

The facts are set out in their Lordships' considered judgment.

Lord Chancellor (Finlay)—This is a case raising an important question of commercial law as to the relations between banker and customer. It has been argued with conspicuous ability by all the counsel engaged on the appeal.

The plaintiffs in the action (now respondents), Messrs Macmillan & Arthur, are a firm of general merchants in the city. The defendants (appellants) carry on business as bankers, and the plaintiffs kept their account at one of their branches. The action was brought by the plaintiffs to have it declared that the defendants are not entitled to debit the plaintiffs with a cheque for £120 which had been paid by the defendants to one Klantschi, by whom it had been fraudulently filled up for £120 instead of £2. The bank resist the claim on the grounds that the plaintiffs had drawn the cheque so negligently as to lead to the fraud, and that the plaintiffs had entrusted the cheque signed by them to Klantschi authorising him to fill it up.

Sankey, J., before whom the case was tried, gave judgment for the plaintiffs, and his judgment was confirmed by the Court of Appeal (Swinfen Eady, L.J., Scrutton, L.J., and Bray, J.) The bank now appeal to your Lordships' House.

The case was treated in the Courts below as turning upon the question whether the case of *Young* v. *Grote*, 1827, 4 Bing. 253, so often cited and so much discussed, is now good law. Both Courts below held that that case is no longer of authority, and that the bank could not rely upon it as a defence.

The facts of the case lie in small compass, and may best be stated in the language of Sankey, J.—"The facts are as follows—The plaintiffs had in their employment a confidential clerk of the name of Klantschi. He had been with them for some years, and they had no reason to distrust him. They left to him the keeping of their books and the filling in of cheques for signature. On the morning of the 9th February 1915 one of the plaintiff partners, Mr Arthur, was going out to lunch about midday. He had his hat on and was leaving the office when the clerk came up to him and said he wanted £2 for petty cash, and produced a cheque for signature. The clerk had repeatedly presented cheques for signature to get petty cash, but usually for £3, and Mr Arthur asked him why it was not £3 on this occasion. The clerk replied that £2 would be sufficient. Mr Arthur thereupon signed the cheque, which I shall discuss more in detail later on. On the next day the clerk did not come to business. Mr Arthur took the opportunity to look through the clerk's books, and found matters which so excited his suspicion that he consulted his solicitor, and on the 11th February both he and the solicitor went to the bank. They there found that the clerk had presented a cheque for £120, which had been paid to him. The clerk was a thief and absconded with the money. His books were subsequently examined, and in the result a number of discrepancies were found. . . . I recollect that Mr Arthur was in a great hurry when he signed the cheque, and I find the fact to be that when he signed it there were no words at all in the space left for words—that space was a blank. There were the figures '2 0 0' in the space left for figures. The clerk having obtained Mr Arthur's signature to the cheque in this condition, properly dated and payable 'to ourselves,' added the words 'one hundred and twenty pounds' in the space left for words, and the figures '1' and '0' on either side of the figure '2.'"

The following is a copy of the cheque, a facsimile of which is before your Lordships:—

"No. 0059745. London, Feb. 9, 1915.
"The London Joint Stock Bank, Limited, Charterhouse Street Branch, 89 Charterhouse Street, E.C.
"Pay to Ourselves or Bearer
One hundred and twenty Pounds.
"£120 0 0. Macmillan & Arthur."

The only fact which it is necessary to add to the learned Judge's statement is that as

was proved the figure "2" which was in the cheque when Mr Arthur signed it was some way from the left-hand side, and that there was room there, and also on the right-hand side of the figure "2" for the insertion of another figure. Sankey, J., added—"Apart from authority, the plaintiffs in my view were not guilty of any negligence up to the time of signing the cheque in question, nor do I think that, having regard to the trust which they rightly reposed in Klantschi, that Mr Arthur was guilty of negligence in signing the cheque as and when he did. Unless, therefore, the state of the authorities is such that I am compelled to hold that the defendants are under the circumstances entitled to my judgment, my decision will be in favour of the plaintiffs."

This House will accept the findings of fact of the learned Judge, concurred in as they were by the Court of Appeal. But his inference from the facts that the plaintiffs were not guilty of negligence stands in a different position. This is a matter of mixed law and fact on which this House is bound to exercise its own judgment.

The relation between banker and customer is that of debtor and creditor, with a superadded obligation on the part of the banker to honour the customer's cheques if the account is in credit. A cheque drawn by a customer is in point of law a mandate to the banker to pay the amount according to the tenor of the cheque. It is beyond dispute that the customer is bound to exercise reasonable care in drawing the cheque to prevent the banker being misled. If he draws the cheque in a manner which facilitates fraud, he is guilty of a breach of duty as between himself and the banker, and he will be responsible to the banker for any loss sustained by the banker as a natural and direct consequence of this breach of duty. Whether what happened in this case can be considered a natural and direct consequence of the customer's negligence in drawing the cheque is in controversy.

It has been often said that no one is bound to anticipate the commission of a crime, and that to take advantage of blank spaces left in a cheque for the purpose of increasing the amount is forgery which the customer is not bound to guard against. It has been suggested that the prevention of forgery must be left to the criminal law. I am unable to accept any such proposition without very great qualification. Every day experience shows that advantage is taken of negligence for the purpose of perpetrating frauds. A warehouseman is bound to take precautions against theft, and if he fails to do so he will be liable to the owner if the goods are stolen. It would be idle for him to contend that he had trusted to the terrors of the criminal law for the prevention of theft.

As the customer and the banker are under a contractual relation in this matter, it appears obvious that in drawing a cheque the customer is bound to take usual and reasonable precautions to prevent forgery. Crime is indeed a very serious matter, but everyone knows that crime is not uncommon. If the cheque is drawn in such a way as to facilitate or almost to invite an increase in the amount by forgery, if the cheque should get into the hands of a dishonest person forgery is not a remote but a very natural consequence of negligence of this description.

Young v. *Grote* was decided nearly 100 years ago. It has been often approved by many of our greatest judges, and with the exception of a recent case in the Privy Council, with which I shall deal later on, there has never been a decision inconsistent with it but for that now under appeal.

The facts in *Young* v. *Grote* are few and are stated in the award of the arbitrator on which the decision of the Court of Common Pleas was given. Mr Young when leaving home for some days, left with his wife five blank cheques signed by him, and desired her in his absence to have them filled up for such sums as the purposes of his business might require. Mrs Young wanted £50, 2s. 3d. to pay wages, and delivered one of her husband's blank cheques to Worcester, a clerk of his, authorising him to fill it up for £50, 2s. 3d. What followed is best stated in the words of the award as set out in the report of the case in 4 Bing. 254, 255—"Worcester accordingly filled it up with that sum and showed it so filled up to Mrs Young and she desired him to get it cashed, but the cheque, when it was so filled up and shown to Mrs Young, presented the following appearance:—The first line contained in print the names of the bankers; the second line contained the words 'Pay wages or bearer,' the word 'wages' only being in writing and the third line contained the words 'fifty pounds' and the figures '2s. 3d.'; but the word 'fifty' commenced in the middle of that third line, and with a small letter, so that ample space in that line was left for the insertion of other words before the word 'fifty'; and there was at the bottom of the draft the figures '50. 2. 3.', but the figure '5' was at a sufficient distance from the letter '£' to allow another figure to be inserted between it and the letter '£.'" Worcester afterwards fraudulently inserted the words "Three hundred and" before the word "fifty," and the figure "3" before the figure "5." The alterations were so made that they could not have been detected by any ordinary diligence, and the bank paid to Worcester £350, 2s. 3d. against the cheque, and debited the customer with the amount. He objected, alleging that his draft was only for £50, 2s. 3d. The award then proceeds as follows—"The arbitrator thought that it was his draft for that sum only, but he thought also that he had been guilty of gross negligence by causing his draft to be delivered to Worcester (in whose handwriting the body of it had been filled up) in such a state that the latter could and did, by the mere insertion of other words, make it appear to be the draft of Peter Young for the larger sum; and that as he, partly by his negligence, had caused the bankers to pay the larger sum, he was bound to make good to them the loss which by reason of his negligence they had sustained by paying that sum. If the Court of Common Pleas should think that opinion wrong, then he awarded that Peter Young

was entitled to receive from Grote & Company the sum of £300 and ordered accordingly."

It is obvious that the award left to the Court the questions whether the arbitrator was right in thinking that Young had been guilty of gross negligence, and whether he was bound to make good to the bankers the larger sum which they had paid owing partly to his negligence. Best, C.J. (p. 259), pointed out the negligence in the manner in which the wife had the cheque filled up, and said that it was by the neglect of ordinary precautions that the bankers were induced to pay. He remarked that in the case of *Hall* v. *Fuller*, 5 B. & C. 750, which had been relied upon, that the cheque was properly drawn in the first instance, and the forgery consisted in expunging the words and figures and the insertion of others in their place. The Chief-Justice concluded his judgment by saying—"We decide here on the ground that the banker has been misled by want of proper caution on the part of his customer." Park, J., said that he concurred in the opinion of the arbitrator that Young was guilty of negligence; Burrough, J., said that the blame was all on one side; and Gaselee, J., that there certainly was gross negligence on the part of Young, and therefore the rule must be discharged.

I have referred at some length to the way in which the Court in the case of *Young* v. *Grote* dealt with the question of negligence, for this reason—It has been argued on behalf of the respondents here that that case merely proceeded on the finding of fact by the arbitrator that there was gross negligence. This is not so. The opinion of the Court was invited and given on the question whether the arbitrator was right in finding negligence, as well as on the question whether Young was liable for the loss which ensued. The Court concurred with the arbitrator on both points.

Best, C.J., has been criticised for basing his judgment on the well-known passsage in Pothier (Traité du Contrat de Change, part 1, c. 4, sec. 99), which he quotes on p. 258 of the report as authority for the proposition that if it be by the fault of the customer that the banker pays more than he ought he cannot be called upon to pay again. The passage will be found at p. 61 of the Paris edition (1809) of Pothier's Traité du Contrat de Change, with notes by Hutteau. It occurs in the course of a long criticism by Pothier of a passage of the Italian jurist Scacchia (quoted *in extenso*, 1896, A.C. 524 to 527), in which he discusses the question of the right of the drawee to be recouped by the drawer when by reason of a fraudulent alteration in the draft he has been led to pay more than the sum really drawn for. Pothier criticises (pp. 59 to 62, *sup.*) the view of Scacchia, and dissents from the wide terms in which the right of indemnity in such cases had been asserted by Scacchia. Pothier treats the question as one of the law of mandate. He cites some illustrations from the Digest xvii, tit. 1 (Mandati vel Contra), 1.26, par. 7, and Digest xlvii, tit. 2 (De Furtis), 1.61 (63), par. 5, and concludes with the passage in question—"Cependant, si c'était par la faute du tireur que le banquier eût été induit en erreur, le tireur n'ayant pas eu le soin d'écrire sa lettre de manière à prévenir les falsifications; *putà*, s'il avait écrit en chiffres la somme tirée par la lettre, et qu'on eût ajouté zéro, le tireur serait, en ce cas tenu d'indemniser le banquier de ce qu'il a souffert de la falsification de la lettre, à laquelle le tireur par sa faute a donné lieu; et c'est à ce cas qu'on doit restreindre la décision de Scacchia." This passage appears to me to be strictly relevant to the case of banker and customer with which Best, C.J., was dealing, and to embody the principle of English as well as of the civil law. It is after citing this passage from Pothier that the Chief-Justice goes on to consider whether it was by the fault of Young that the payment was made.

It was upon this ground, and this ground alone, that *Young* v. *Grote* was decided by three of the four Judges of the Common Pleas. It is true that Park, J., while concurring in the finding of negligence, also says (p. 260)—"Can anyone say that the cheque signed by Young is not a genuine order? I say it is. The cheques left by him to be filled up by his wife when filled up by her became his genuine orders." And this is the explanation of *Young* v. *Grote* adopted by Lord Mersey in the case of *Union Credit Bank* v. *Mersey Docks and Harbour Board*, 4 Com. C. 227, 1899, 2 Q.B. at pp. 210-211, while rejecting the reason given by the majority, on what I venture to think are insufficient grounds. It is true that Young left the cheques signed in blank with his wife to be filled up by her. She by the hand of the clerk filled one up with the correct amount, and the fraudulent alteration was afterwards made by the clerk with whom she had left the cheque merely to get payment of the correct amount. But the additional ground suggested by Park, J., and adopted by Lord Mersey, whether applicable or not to the facts in *Young* v. *Grote*, has, as I shall afterwards show, a most important bearing on the case now under appeal.

The sole ground upon which *Young* v. *Grote* was decided by the majority of the Court of Common Pleas was that Young was a customer of the bank, owing to the bank the duty of drawing his cheque with reasonable care; that he had delegated the performance of this duty to his wife; that she had been guilty of gross negligence in having the cheque filled up in such a manner as to facilitate an increase of the amount; and that the fraudulent alteration of the cheque by the clerk to whom, after being filled up, it had been entrusted by her for the purpose of getting payment would not have taken place but for the careless manner in which the cheque was drawn. The duty which the customer owes to the bank is to draw the cheques with reasonable care to prevent forgery, and if, owing to neglect of this duty, forgery takes place, the customer is liable to the bank for the loss. This is the principle expressed in the passage from Pothier cited above. It may be put in various ways. Sometimes it has

been said that an estoppel is created, and that as the negligence of the customer enabled the clerk to alter the amount to that which the banker paid, he is estopped from disputing the authority of the banker to pay. Sometimes it has been said that the payment must be allowed in account with the bank in order to avoid circuity of action, the customer being liable to the bank for his negligence, and this latter was the ground on which Cockburn, C.J., rested the decision in *Young* v. *Grote*—(*Swan* v. *North British Australasian Company*, 2 H. & C., at pp. 189, 190). In whichever of these ways it may be put, the ground is really one and the same—as the negligence of the customer caused the loss he must bear it. The fact that a crime was necessary to bring about the loss does not prevent its being the natural consequence of the carelessness. If the door of a warehouse is left unlocked at night the goods may be stolen, and if a cheque is drawn with neglect of all usual precautions to prevent falsification the cheque may be falsified. The loss in each case is the result of the omission of ordinary and reasonable precaution. The whole matter is stated by Best, C.J., in two sentences (4 Bing., at p. 258). After stating that it is the rule that if a payment be made without authority the banker, not the customer, must suffer, he goes on to say—"But though that rule be perfectly well established, yet if it be the fault of the customer that the banker pays more than he ought, he cannot be called on to pay again," and quotes Pothier's doctrine that if it was by the fault of the drawer that the banker was misled in the matter, the drawer not having taken care to write the draft so as to prevent falsification, the drawer will be bound to indemnify the banker against loss from the falsification for which the drawer by his fault has given occasion. This is illustrated by what was said about the case of *Young* v. *Grote* in the curious case of *Ingham* v. *Primrose*, 1859, 7 C.B. (N.S.) 82, in which the acceptor of a bill of exchange, intending to cancel it, tore it in half and threw it into the street. The tearing had been done in such a way that the appearance of the bill was consistent with its having been divided for the purpose of safe transmission by the post. The finder of the two pieces pasted them together and put the bill into circulation. The acceptor was held liable at the suit of a *bona fide* holder. It had been argued on behalf of the defendants that the putting together of the two halves amounted to forgery, and on this point Williams, J., in delivering the judgment of the Court of Common Pleas, said (pp. 87-88) that even assuming that the act of reconstructing the bill was a forgery, yet, on the principle of *Young* v. *Grote*, this would be no answer to the plaintiff's claim, because the defendant by abstaining from an effectual cancellation or destruction of the bill had led to the plaintiff taking the bill for value without notice. Apart from the merits of the decision in that particular case, this judgment is a recognition by a strong Court of the authority of *Young* v. *Grote*, and a ruling that the fact that forgery was necessary to take advantage of the negligence would afford no answer.

Of course the negligence must be in the transaction itself, that is, in the manner in which the cheque is drawn. It would be no defence to the banker if the forgery had been that of a clerk of a customer, that the latter had taken the clerk into his service without sufficient inquiry as to his character. Attempts have often been made to extend the principle of *Young* v. *Grote* beyond the case of negligence in the immediate transaction, but they have always failed.

The grounds of the decision in *Young* v. *Grote* were discussed in 1851, in 1854, and in 1861 by judges of great distinction—Parke, B., Pollock, C.B., and Lord Cranworth. Parke, B., in the well-known case of *Robarts* v. *Tucker*, 1851, 16 Q.B. 560, distinguished *Young* v. *Grote* from the case then under consideration. In the report (16 Q.B., pp. 579-580) Parke, B., is reported as putting the decision in *Young* v. *Grote* on the ground that the customer had signed a blank cheque, giving authority to anyone in whose hands it was to fill up the cheque in whatever way the blank permitted; while in 15 Jurist, O.S., at p. 988, he is reported as saying that in *Young* v. *Grote* there was negligence in the drawing of the cheque itself, which was the authority given by the drawer to the bank. Pollock, C.B., in delivering the judgment of the Court in *Barker* v. *Sterne*, 1854, 9 Ex., pp. 686-687, cites *Young* v. *Grote*, and says—"It was held that the loss must fall on the drawer as it was caused by his negligence. Now, whether the better ground for supporting that decision is that the drawer is responsible for his negligence which has enabled a fraud to be perpetrated, or whether it be considered that when a person issues a document of that kind the rest of the world must judge of the authority to fill it up by the paper itself, and not by any private instructions, it is unnecessary to inquire. I should prefer putting it on the latter ground." Lord Cranworth in giving judgment in your Lordships' House in the Scottish case, *Orr* v. *Union Bank of Scotland*, 1854, 1 Macq. H.L., at p. 523, says of *Young* v. *Grote*—"The decision went on the ground that it was by the fault of the customer the bank had been deceived. Whether the conclusion in point of fact was in that case well warranted is not important to consider. The principle is a sound one, that where the customer's neglect of due caution has caused his bankers to make a payment of a forged order, he should not set up against them the invalidity of a document which he has induced them to act on as genuine." And in 1861 Lord Cranworth in another Scottish case, *British Linen Company* v. *Caledonian Insurance Company*, 4 Macq. H.L. 107, again referred to *Young* v. *Grote* as a case in which there was negligence in circumstances that were the immediate cause of payment by the banker, and said the decision proceeded on the ground that negligence on the part of the drawer had afforded the opportunity for the fraud.

To what was said by the three Judges whom I have just quoted may be added the observations made by Cleasby, B., in deliver-

ing the judgment of the Court of Exchequer in *Halifax Union* v. *Wheelwright*, L.R., 10 Ex. 183. At p. 192, after referring to some variety in the reasons which had been given for the conclusions reached in *Young* v. *Grote*, he said—"It is perhaps only an application of one of those general principles which do not belong to the municipal law of any particular country, but which we cannot help giving effect to in the administration of justice, namely, that a man cannot take advantage of his own wrong. A man cannot complain of the consequences of his own fault against a person who was misled by that default without any fault of his own."

Perhaps no case has been more frequently cited than *Young* v. *Grote*, and very largely by reason of repeated attempts to pray in aid its principle under circumstances to which it has no real relation.

The first case of this description was that of *Bank of Ireland* v. *Evans' Charities*, 1855, 5 H.L.C. 389. In that case stock belonging to Evans' Charities, registered in the Bank of Ireland, had been transferred under powers of attorney to which the seal of the trustees of the charities had been fraudulently affixed by the secretary. The jury found that the trustees had contributed to the loss by their negligence in allowing the secretary to have control of the seal, and it was decided by the House of Lords that this afforded no answer to the claim of the trustees to the stock. *Young* v. *Grote* was much discussed in the course of the argument in their Lordships' House. Parke, B., delivering the opinion of all the Judges, says at pp. 409, 410, that negligent custody of the seal was not enough, and that the negligence which would deprive the plaintiff of his right to insist that the transfer was invalid must be negligence in or immediately connected with the transfer itself, and proceeded as follows:—"Such was the case of *Young* v. *Grote*, on which great reliance was placed in the argument at your Lordships' Bar. In that case it was held to have been the fault of the drawer of the cheque that he misled the banker on whom it was drawn by want of proper caution in the mode of drawing the cheque, which admitted of easy interpolation, and consequently that the drawer, having thus caused the banker to pay the forged cheque by his own neglect in the mode of drawing the cheque itself, could not complain of that payment." And at pp. 413, 414, Lord Cranworth, L.C., said—"Now the case of *Young* v. *Grote* went upon that ground (whether correctly arrived at in point of fact is immaterial) that the plaintiff there was estopped from saying that he did not sign the cheque for £350, and if the circumstances are such, whether arising from negligence or from any other cause, that as between the customer and his banker the customer is estopped from saying that he did not sign the cheque for a particular amount, that as between them is just the same as if he had signed it. Therefore, taking that view of the facts, the case may be well sustained, and appears to have been well decided." This is another way of saying that the customer could not complain of the payment, having caused the banker to pay the forged cheque by his own neglect in the mode of drawing the cheque itself, to quote the language of Parke, B. Lord Brougham, at p. 415, cites *Young* v. *Grote* without disapproval, while he goes on to express doubts as to the decision in *Coles* v. *Bank of England*, 10 Ad. & Ell. 437.

A little later in the same year (1859) arose the case of *Ex parte Swan*, 7 C.B., N.S. 400. The question there arose on a rule *nisi* to enforce the claim of the applicant to be inserted in the register in respect of shares which had been transferred to third parties under transfers from the applicant which were forgeries. The claim was rested on the ground that the transfers had been executed by the applicant in blank and had been negligently left in the custody of his broker, who afterwards fraudulently filled them up and sold the shares. The Court was equally divided in opinion and the rule dropped. *Young* v. *Grote* was referred to with approval by all the four Judges, though they differed as to its applicability. Erle, C.J., quotes *Young* v. *Grote* as an authority, and says that it proceeded on the ground that the plaintiff was estopped from setting up against the defendant that the cheque was only £50, inasmuch as it was his negligence by his agent that enabled the fraudulent holder to cheat the banker (at p. 431). Keating, J., at p. 440, says it went on the ground that a cheque had been drawn so as to admit easily of alteration. At p. 445 Williams, J., says—"The case of *Young* v. *Grote* has been recently recognised in this Court, and its authority cannot be disputed." Willes, J., distinguished *Young* v. *Grote* as relating to a negotiable instrument.

Next year Mr Swan brought an action against the company to assert his title to these shares, and a case was stated for the opinion of the Court of Exchequer—*Swan* v. *North British Australasian Company, Limited*, 1862, 7 H. & N. 603. The four Judges before whom the hearing took place were agreed that negligence to operate as an estoppel must be the proximate cause of the loss, but differed in their opinion as to the particular case before them. No dissent from the doctrine of *Young* v. *Grote* was expressed by any of the judges, and Channell, B., referring to the fact that *Young* v. *Grote* had been strongly pressed upon the Courts, said that it must be considered as explained by Parke, B., in *Robarts* v. *Tucker*, 16 Q.B. 579, 580, and by the Judges in the House of Lords in *Bank of Ireland* v. *Evans' Charities*, 1855, 5 H.L.C. 389. The case was taken to the Exchequer Chamber in 1863, 2 H. & C. 157, and it was held there, Keating, J., dissenting, that the plaintiff was entitled to the shares, the Court holding that negligence to operate as an estoppel must be the proximate cause of the loss. Three of the Seven Judges referred to *Young* v. *Grote*. Blackburn, J., while expressing disapproval of *Coles* v. *Bank of England*, expresses no disapproval of *Young* v. *Grote*, and on the contrary, after referring (at p. 182) to the manner in which *Young* v. *Grote* had been dealt with by Williams, J., in *Ex parte Swan*, 7 C.B., N.S. at p. 445, where it will be recollected Williams, J., had said that the autho-

rity of *Young* v. *Grote* could not be disputed, proceeds thus (at pp. 182, 183)—"It may be that that case" (*Young* v. *Grote*) "is to be supported on some of the grounds there stated, or upon the broader ground, apparently supported by the authority of Pothier in the passage cited in *Young* v. *Grote*, that the person putting in circulation a bill of exchange does, by the law merchant, owe a duty to all parties to the bill to take reasonable precautions against the possibility of fraudulent alteration in it; it is not necessary in this case to inquire how that may be." I may remark in passing that this last suggestion is too widely put, as was held by this House in *Scholfield* v. *Earl of Londesborough*, 1896 A.C. 514, but is quite correct as applied to the case of banker and customer with reference to cheques, as in *Young* v. *Grote*. Cockburn, C.J. (at pp. 189-190) says that *Young* v. *Grote* was not decided on estoppel, but on the ground that as the loss had been brought about by the negligence of the customer the latter must bear the loss sustained, and suggested that these facts were held to give a defence to avoid circuity of action. The other judge who refers to *Young* v. *Grote* is the dissenting judge, Keating, J., who relied upon its authority (p. 179). The authority of the case was disputed by no member of the Court, but the circumstances of the case then before the Court were entirely different.

The group of cases to which I have just referred, 1855 to 1863, recognise the authority of the decision of *Young* v. *Grote*, while establishing that it applies only to cases in which the negligence is in the transaction itself, and has no application to cases where the fraud has been merely facilitated by negligence in the custody of the seal of a corporation or of transfers in blank. The principle which underlies these decisions is further illustrated in the cases of *Arnold* v. *Cheque Bank, Limited*, 1 C.P.D. 578; *Baxendale* v. *Bennett*, 3 Q.B.D. 525; *Mayor of the Staple of England* v. *Bank of England*, 21 Q.B.D. 160; *Lewes Sanitary Laundry Company* v. *Barclay*, 11 Com. C. 255; and *Kepitigalla Rubber Estates* v. *National Bank of India*, 1909, 2 K.B. 1010.

In the case of *Arnold* v. *Cheque Bank*, evidence to prove that there had been negligence in the custody and transmission of a draft which had afforded facilities for its being stolen by one Hecht, who forged the endorsement of the plaintiffs and obtained payment, was rejected on the ground that the alleged negligence was collateral only to the transaction. The judgment of the Court (Lord Coleridge, C.J., and Archibald and Lindley, JJ.) refusing a new trial was delivered by Lord Coleridge, who (at pp. 586 to 588) discusses *Young* v. *Grote* and other authorities. He points out that one has only to look at the case itself to see that *Young* v. *Grote* proceeded on the fault of the drawer in the mode of drawing the cheque, "and is entirely consistent with the rule laid down and explained on fuller consideration in subsequent cases, namely, that negligence in order to estop must be in the transaction itself" (p. 587).

Baxendale v. *Bennett* was the case of an acceptance in blank without a drawer's name being stolen from an unlocked drawer in which it was kept. Brett, L.J., was mistaken in saying (as he does at p. 534 in this case) that the decision of the House of Lords in *Bank of Ireland* v. *Evans' Charities* had shaken the authority of *Young* v. *Grote* and *Coles* v. *Bank of England*, as it will be found on examination of the passage referred to that while it is true of *Coles* v. *Bank of England*, it is not clear of *Young* v. *Grote*. And in *Mayor of the Staple of England* v. *Bank of England* Lord Esher himself explains *Young* v. *Grote* as a case in which the negligence was in or immediately connected with that which happened, and said that the negligence must be approximately connected with the result (p. 172).

The case last mentioned was one in which the plaintiffs were held entitled to recover stock belonging to them which had been transferred under a transfer to which their seal had been fraudulently affixed by their clerk notwithstanding negligence on their part in the custody of the seal.

The principle was elaborately discussed by Kennedy, J., in *Lewes Sanitary Laundry Company* v. *Barclay*. This was a case of banker and customer. Cheques had been forged by the customer's clerk, and the bank set up as a defence that the customer had been negligent in keeping a clerk in his employment knowing that on a previous occasion he had been convicted of forgery. This contention was rejected by Kennedy, J., on the ground that to make good such a defence the bank would have to show that it had been misled into making the payments by neglect on the part of the customer in or immediately connected with the forgery or uttering of the cheques, and that the fraud followed as a natural and ordinary result from the negligent conduct of the customer. These are exactly the conditions which existed in *Young* v. *Grote*.

So in *Kepitigalla Rubber Estates* v. *National Bank of India*, which was a case of forged cheques, Bray, J., laid down that it is the duty of the customer of a bank to use reasonable care in the issuing of mandates, citing *Young* v. *Grote* and other authorities, and went on to say—"I should come to the same conclusion apart from authority. It seems to me to be clearly the duty of a person giving a mandate to take reasonable care that he does not mislead the person to whom the mandate is given." The learned Judge goes on to point out that to afford a defence to the banker the breach of duty must be, as in *Young* v. *Grote*, in connection with the drawing of the order or cheque, and that there is no obligation as between customer and banker that the person should take precautions in the general carrying on of his business or in examining and checking the pass-book.

The celebrated case of *Bank of England* v. *Vagliano*, [1891] A.C. 107, which arose out of the forgeries of a clerk named Glyka, came up to the House of Lords in 1891. The facts of the case are very different from those now before this House. No doubt was expressed by any of their Lord-

ships who took part in the decision as to the authority of *Young* v. *Grote*. Lord Selborne refers to "the cases in which the drawer of a cheque has been held bound by fraudulent alterations for which the state of the paper afforded space," and appears to rely upon them in support of his reasoning against the liability of the Bank of England. Lord Bramwell refers to *Young* v. *Grote* as an authority, and says that the result of the authorities is "that the conduct of the bank's customer to enable the bank to charge the customer must be conduct directly causing the payment." Lord Field says this—"Reliance was placed by the defendants on the case of *Young* v. *Grote*. That case, no doubt, must be considered as well decided, but various opinions have been expressed as to the real ground of the decision. But we have only to look at the case itself to see that it really proceeded on the authority of the extract from Pothier cited in the judgment of Best, C.J., which makes the inability to recover depend upon the fault of the drawer of the cheque in the mode of drawing it, and is entirely consistent with the rule laid down and explained on fuller consideration in subsequent cases, viz., negligence in order to estop must be negligence in the transaction itself—see *per* Blackburn, J., in *Swan* v. *North British Australasian Company*.

A very serious extension of the effect of the decision in *Young* v. *Grote* was attempted in the years 1894 to 1896 in the case of *Scholfield* v. *Earl of Londesborough*, decided in the first instance by Charles, J., whose decision was confirmed in the Court of Appeal and in your Lordships' House, 1896 A.C. 514. In that case the defendant had accepted a bill of exchange for £500 drawn upon him by one Saunders, and bearing a stamp sufficient to cover £4000. Before indorsement it was fraudulently altered by the drawer to £3500 by the insertion of the words "three thousand" before the words "five hundred" and the figure "3" before the figure "5." The acceptor was sued on the bill by a holder for value.

It is necessary to state the course of this case somewhat fully in view of its bearing upon the subsequent case of *Colonial Bank of Australasia* v. *Marshall*. Charles, J., held that a person who signs a negotiable instrument with the intention that it should be delivered to a series of holders incurs a duty to those who take the instrument not to be guilty of negligence with reference to the form of the instrument, and that if he signs it negligently in such a shape as to render alterations easy, in the result he is responsible on the altered instrument. He applied to negotiable instruments generally the doctrine of *Young* v. *Grote* as to a cheque between banker and customer. He then went on to inquire whether the acceptor was guilty of negligence in accepting the bill and held that he was not. He referred to *Young* v. *Grote*, and said that a glance at the cheque there would have satisfied any careful person that it was in a state in which alteration was not merely a possible but a likely result, and then said—"Here I cannot see anything to warrant such a finding. The unaltered bill was complete in form, and upon inspection would not, in my judgment, have excited suspicion in the mind of a reasonably prudent man." He therefore held that the acceptor was liable on the bill for £500 and no more. He pointed out that the question whether the defendant had been guilty of such negligence as would impose upon him a liability for the subsequent forgery was a question not of law but of fact, referring particularly to the case of *La Société Générale* v. *Metropolitan Bank*, 27 L.T.R. 849, 21 W.R. 335.

The defendant appealed, and in the Court of Appeal it was held by the majority, Lord Esher, M.R., and Rigby, L.J., that the acceptor of a bill incurs no such duty as Charles, J., had found. As Lord Esher points out, it would be a very dangerous doctrine if a draft could be refused acceptance on the ground that there were spaces in it and the bill were to be protested in consequence. He said that *Young* v. *Grote*, which he characterised as "the fount of bad argument," had no application, as it was a question between banker and customer, and the person said to be negligent was the drawer of a cheque and not the acceptor of a bill of exchange. He added that the only ground on which *Young* v. *Grote* could be supported was that the customer signed a blank cheque. As to the finding by Charles, J., on the question of negligence Lord Esher says—"Suppose, however, there were a duty owing by the acceptor, it must be a duty not to accept the bill in such a form as to render a forged interpolation easy. The suggested neglect of that duty is that the acceptor ought to have anticipated that the bill would fall into the hands of a felonious person who might take advantage of the spaces, and that the acceptor should on that anticipation have put marks on the bill to fill up the spaces. Unless it can be laid down that the mere fact of leaving such spaces unfilled is conclusive evidence of negligence it might be that on a similar state of things different juries might take different views. That, again, would be a dangerous state of things. If, however, it is a question of fact for our decision I am of opinion that such evidence as was given in this case is no evidence of negligence;" and he added that even if there was negligence it was not the negligence but the subsequent forgery which was the immediate cause of the loss.

Rigby, L.J., on the question of negligence said that it was probable that the drawer had used some means to close the defendant's eyes to the imperfections of the bill, and added—"The state of evidence makes it impossible to say that the plaintiff has proved negligence."

Lopes, L.J., differed, holding that the duty existed, and that there had been negligence so that the plaintiff was in his opinion entitled to recover on the bill altered to £3500.

It is obvious that the position of the acceptor of a bill of exchange with reference to subsequent holders is very different from that of a customer with reference to his banker in the case of a cheque. In the latter case there is a definite contractual

relation involving the obligation to take reasonable precautions.

When *Scholfield's* case came to the House of Lords, Lord Halsbury said of *Young* v. *Grote*—"That case has been pushed so far in argument that I think the time has come when it would be desirable for your Lordships to deal with it authoritatively, and to examine how far it ought to be quoted as an authority for anything." And towards the close of his judgment Lord Halsbury refers to *Adelphi Bank* v. *Edwards* (not reported), a case as to a bill of exchange, and goes on to say—"I entirely concur with what Lindley, L.J., said in that case, that it was wrong to contend that it is negligence to sign a negotiable instrument so that somebody else can tamper with it; and the wider proposition of Bovill, C.J., in a former case, *Société Générale* v. *Metropolitan Bank*, that people are not supposed to commit forgery, and that the protection against forgery is not the vigilance of parties excluding the possibility of committing forgery but the law of the land.

The distinction between *Young* v. *Grote* and such a case as *Scholfield* was clearly pointed out by five of the peers who took part in the decision.

Lord Watson says—"In my opinion *Young* v. *Grote* can have no bearing upon the present case if it was decided upon the ground that the customer by signing a blank cheque had given implied authority to fill it up to any subsequent holder.

"Whoever signs a cheque or accepts a bill in blank and then puts it into circulation must necessarily intend that either the person to whom he gives it or some future holder shall fill up the blank which he has left. No such inference would be reasonable in the case where the drawer or acceptor signs for a particular sum specified on the face of the document. If on the other hand the decision in *Young* v. *Grote* was based upon 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, I am not prepared to affirm that it cannot be supported by authority. But it does not, in my opinion, necessarily follow that the same rule must be applied between the acceptor of a bill of exchange and a holder acquiring right to it after acceptance. The duty of the customer arises directly out of contractual relation existing at the time between him and the banker, who is his mandatory. There is no such connection between the drawer or acceptor and possible future indorsees of a bill of exchange. The duty which the appellant's argument assigns to an acceptor is towards the public, or, what is much the same thing, towards those members of the public who may happen to acquire right to the bill after it has been criminally tampered with. Apart from authority I do not think the imposition of such a duty can be justified on sound legal principle." He then reviews the authorities and shows that they lead to the same conclusion, and goes on—"The doctrine of Pothier, out of which the contention of the bill-holder in this and previous litigations has grown, is founded upon reasons which have no application to any question between a drawer or acceptor and a holder acquiring right to the bill after acceptance, and I know of no principle of law which would warrant its extension to that case."

Lord Macnaghten says that on no view of *Young* v. *Grote* could it apply to such a case as that before the House, and (on pp. 545-546)—"Whatever may be the better ground for supporting the decision in *Young* v. *Grote*, it is obvious, on referring to the report in Bingham, that the Court went very much on the authority of the doctrine laid down by Pothier, that in cases of mandate generally, and particularly in the case of banker and customer, if the person who receives the mandate is misled through the fault of the person who gives it, the loss must fall exclusively on the giver. That is not unreasonable, but the doctrine has no application to the present case. There is no mandate as between the acceptor of a bill and a subsequent holder."

Lord Morris says that in *Young* v. *Grote* the document was in blank, and adds—"Even if well decided on its particular facts, and a case between banker and customer, I fail to see how it governs this case, where the defendant accepted a regularly filled-up bill."

Lord Shand says—"As to the case of *Young* v. *Grote*, I find nothing in the grounds of the judgment which supports the proposition that an indorsee of a bill of exchange for value has a legal claim against the acceptor against whom no want of *bona fides* can be alleged for a sum beyond the amount for which the acceptance was given, on the ground of negligence in his having given his acceptance to a bill in such a form and impressed with such a stamp as enabled the drawer to commit a forgery by enlarging the amount for which the acceptance was granted in such a way as to escape detection by the indorsee." He then goes on to point out that on neither of the two grounds (negligence and signature of the cheques in blank), on which *Young* v. *Grote* had been supported, could it have application to the facts of the case under discussion.

Lord Davey expressed his entire agreement with Lord Watson's judgment, and says—"I only desire to say that in my opinion our judgment in this case is outside the case of *Young* v. *Grote*. The doctrine of that case was one arising out of the relation of mandant and mandatory, which does not exist in the case of the acceptor and holder of a bill of exchange."

The decision of the House of Lords in the *Scholfield* case therefore proceeded on the ground that the duty which *Young* v. *Grote* affirmed to exist as between banker and customer had no relation to any supposed duty on the part of the acceptor of a bill of exchange to those into whose possession the bill might pass. The decision of the House of Lords does not infringe upon the authority of *Young* v. *Grote*. On the contrary, I think it recognises it.

The last case which it is necessary to

notice is that of the *Colonial Bank of Australasia* v. *Marshall* (1906 A.C. 559), which, though not binding on any English court, commands the most respectful consideration. This was an Australian case in which Marshall, Day, and one Myers were executors, and as such opened an account with the colonial bank on which cheques were to be drawn signed by the three. The cheques were drawn by Myers, who sent them for signature to Marshall and Day, and then added his own signature. Five cheques for small amounts were drawn by Myers and signed by Marshall and Day. Myers, before signing himself, added words and figures in the cheque as signed by Marshall and Day, and in this way greatly increased the apparent amounts of the cheques. Having signed the cheques himself he got them cashed for the increased amounts. The question was whether Marshall and Day could throw the loss on the bank. In the judgment of the Judicial Committee (Lord Halsbury, Lord Macnaghten, Sir Arthur Wilson, and Sir Alfred Wills) delivered by Sir Arthur Wilson, it is said that *Scholfield* v. *Earl of Londesborough* in the House of Lords is now the governing authority, and after stating the course of that case before Charles, J., it is pointed out that the Court of Appeal negatived the existence of the alleged duty and the allegation that, assuming it existed, there had been a violation of it, so that both propositions were before the House of Lords. Sir Arthur Wilson says that the existence of the duty was negatived by the House of Lords but that that did not affect the case then under appeal, as it was recognised that there is or may be a duty on the part of a drawer of a cheque towards his banker which does not exist on the part of the acceptor of a bill towards holders. He said that no attempt was made to define the extent of such obligation, and that it might be impossible to do so as the extent of the duty might depend on the course of dealing between the parties. The judgment then proceeds as follows—"But the duty which, according to the ruling of the learned Chief-Justice, subsists between customer and banker is substantially the same as that contended for in *Scholfield* v. *Earl of Londesborough* as existing between the acceptor and the holder of a bill. And as has been pointed out the House of Lords had before them on the appeal the question whether the Court of Appeal was right in ruling that the facts found in that case (which included everything existing in the present case) did not amount to a breach of the obligation supposing that obligation to exist.

"Not one of the members of their Lordships' House appears to have expressed the slightest disapproval of that ruling, and most of their Lordships distinctly approved of it. The Lord Chancellor expressed his concurrence in the opinion of Lindley, L.J., 'that it was wrong to contend that it is negligence to sign a negotiable instrument so that somebody else can tamper with it, and the wider proposition of Bovill, C.J., in a former case, *Société Générale* v. *Metropolitan Bank*, that people are not supposed to commit forgery, and that the protection against forgery is not the vigilance of parties excluding the possibility of committing forgery but the law of the land.' Lord Watson approved the same rulings. Lord Macnaghten expressed the same opinion, and Lord Davey concurred in the judgment of Lord Watson.

"The principles there laid down appear to their Lordships to warrant the proposition that whatever the duty of a customer towards his banker may be with reference to the drawing of cheques, the mere fact that the cheque is drawn with spaces such that a forger can utilise them for the purpose of forgery is not by itself any violation of that obligation. Their Lordships therefore agree with the High Court of Australia in holding that there was no evidence proper to be left to the jury of negligence on the part of the respondents."

The reasoning of the whole of this passage in the judgment in *Colonial Bank of Australasia* v. *Marshall* rests on the assumption that the standard as to negligence applicable in the case of banker and customer is the same as that which would be applicable in the case of the acceptor of a negotiable instrument if the duty to take care existed. It is, of course, difficult to define the extent of a duty where no duty at all exists, as is the case with an acceptor of a bill and subsequent holders. But on the hypothesis that there is some obligation to exercise care in the case of an acceptor of a bill as well as in the case of a customer with regard to his cheque the facts which would constitute negligence would be very different in the two cases. Charles, J., while finding the existence of the duty in *Scholfield's* case, held that there had been no negligence, while he fully recognised the doctrine of *Young* v. *Grote* as to banker and customer where the negligence of leaving blank spaces in drawing a cheque is pointed out. The questions are essentially different. As pointed out by Lord Esher in *Scholfield's* case, the consequences of refusing acceptance of a draft because there were blank spaces in it might be serious, and all this must be taken into account in determining whether in such a case the acceptance was given negligently as regards the supposed liability to subsequent holders. On the other hand, in the case of banker and customer, the manner in which the cheque is to be filled up is entirely in the hands of the customer, and if he leaves unusual blank spaces which facilitate forgery, according to *Young* v. *Grote* and on principle there is negligence as between him and the banker. The passages cited by Sir Arthur Wilson from the judgments in *Scholfield's* case are rather directed to the negation of the existence of any duty as between the acceptor of a bill of exchange and holders. Without the existence of duty to take care there can be no negligence, and what was settled by *Scholfield's* case is that no such duty exists as between acceptor and holders of a bill. With the greatest respect I do not think that these passages support the proposition that as between banker and customer there is no negligence in drawing a cheque

with blank spaces which facilitate forgery. Indeed, such an interpretation of these passages is inconsistent with the manner in which *Young* v. *Grote* is treated by five out of the six peers who took part in the decision of *Scholfield's* case. The dictum of Lindley, L.J., in the *Adelphi Bank* case, which is cited by Lord Halsbury, was laid down in a case in which the liability of the acceptor to holders was in question, not on a case of banker and customer, and the same observation applies to the judgment of Bovill, C.J., in the *Société Générale* v. *Metropolitan Bank*. In the course of his judgment Bovill, C.J., is at pains to point out that the circumstances of *Young* v. *Grote* were entirely different from those of the case before him, where there was simply a blank in the printed form of the bill of exchange.

The question whether there was negligence as between banker and customer is a question of fact in each particular case, and can be decided only on a view of the cheque as issued by the drawer, with the help of any evidence available as to the course of dealings between the parties or otherwise. If the existence in a cheque of blank spaces of an unusual nature and such as to facilitate interpolation, is declared to be no evidence of a breach of duty as between customer and banker, the duty would have little left to operate upon. To recognise the duty of care by the customer in drawing cheques and then to lay down as a matter of law that there is no breach of that duty by leaving such blank spaces in the cheque, is in effect to eviscerate the duty.

If *Young* v. *Grote* is right the judgment now appealed from is wrong. In my opinion the decision in *Young* v. *Grote* is sound in principle and supported by a great preponderance of authority, and must be treated as good law.

The ground on which *Young* v. *Grote* proceeded was, according to the judgment of three out of the four judges, simply this, that if a customer in drawing a cheque neglects reasonable precautions against forgery and forgery ensues, he is liable to make good the loss to the banker, and that the fact that a crime has to intervene to cause the loss does not make it too remote. Indeed, forgery is the very thing against which the customer is bound to take reasonable precaution. Leaving blank spaces in the cheque is the commonest way in which forgery is facilitated, and to lay down as a matter of law that it is no breach of duty would be a somewhat startling conclusion. In *Young* v. *Grote* there was the additional circumstances of the small "f" at the beginning of the word "fifty," but I cannot doubt that without this the result would have been the same.

In the present case the customer neglected all precautions. He signed the cheque, leaving entirely blank the space where the amount should have been stated in words, and where it should have been stated in figures there was only the figure "2" with blank spaces on either side of it. In my judgment there was a clear breach of the duty which the customer owed to the banker. It is true that the customer implicitly trusted the clerk to whom he handed the document in this state to fill it up and to collect the amount, but his confidence in the clerk cannot excuse his neglect of his duty to the banker to use ordinary care as to the manner in which the cheque was drawn. He owes that duty to the banker as regards the cheque, and it is no excuse for neglecting it that he had absolute and, as it turned out, unfounded confidence in the clerk. The duty is not a duty to have clerks whom the customer believes to be honest. It is a specific duty as to the preparation of the order upon the banker. If the customer chooses to dispense with ordinary precautions because he has complete faith in his clerk's honesty, he cannot claim to throw upon the banker the loss which results. No one can be certain of preventing forgery, but it is a very simple thing in drawing a cheque to take reasonable and ordinary precautions against forgery. If owing to the neglect of such precautions it is put into the power of any dishonest person to increase the amount by forgery, the customer must bear the loss as between himself and the banker.

But further, it is well settled law that if a customer signs a cheque in blank and leaves it to a clerk or other person to fill it up, he is bound by the instrument as filled up by the agent. This has been suggested as the real ground for the decision in *Young* v. *Grote*. For the reasons which I have already stated, I do not think that on the facts of that case it is the true ground of the decision. But the principle is thoroughly established, and it seems to me to apply to the facts of the present case. The customer signed the cheque in the condition which I have described, and handed it over to the clerk to be filled up by him. For all practical purposes the cheque was in blank, as the figure "2" in its isolated position afforded no security whatever against a fraudulent increase. The clerk had the authority of the customer to fill up the words denoting the amount in the body of the cheque, and to put other figures before and after the "2" was quite easy owing to its position. The examination of the facsimile of the cheque when filled up shows how impossible it was to detect the fraud. On such facts the customer is liable for the act of the clerk just as much as if the cheque had been completely in blank when he signed it and handed it to the clerk to fill it up. There was no apparent limitation on the authority of the clerk in filling up the cheque. On this ground also, which on my view of *Young* v. *Grote* is independent of that decision, I am of opinion that this appeal should be allowed.

For these reasons I think that judgment should be entered for the bank, with costs here and below.

VISCOUNT HALDANE — The respondents, who are in partnership as general merchants, at the time of the transaction in question were customers at the appellant bank. They employed as their clerk one Klantschi, who was their book-keeper and cashier, and

who, amongst other duties which he discharged, used at times to fill in cheques for them for signature. In the forenoon of the 9th February 1915 Mr Arthur Doluchanjanz, one of the respondent partners, was going out of his office to luncheon. He appears to have been in a hurry, and to have had his hat already on, when Klantschi called him back and said that he wanted him to sign a cheque for petty cash for the firm. Klantschi brought him a loose cheque torn out of the cheque book and without the counterfoil. Mr Arthur Doluchanjanz appears from his own account to have taken a pen which Klantschi handed to him, and to have signed the cheque without further consideration. He only remarked that he did not like signing with Klantschi's pen, and that he wished he would bring cheques to his private office in future. He, however, signed the firm's name to this one, with the observation that the cheque was for £2 and that usually Klantschi asked for £3 for petty cash. The latter replied that the amount was enough.

The cheque was not completely filled in when the partner signed it. It was already dated and made payable to "Ourselves or Bearer." But, as Sankey, J., who tried the case, found, no words at all had been inserted in the space provided for the indication in words of the amount, and in the space provided for figures there was a "2," with room in which other figures could be inserted on each side of this figure. After Mr Arthur Doluchanjanz had left the office Klantschi proceeded to fill in the cheque thus left incomplete. His employer had without doubt authorised him to fill it in so as to be a complete cheque for £2 and then to take it to the bank and cash it, But he inserted "one hundred and twenty" pounds in the space provided for words, and he further inserted a "1" to the left and a "0" to the right of the "2" in the space where the latter figure was written, making a corresponding amount in figures of £120. He subsequently took the cheque to the bank, obtained cash for it over the counter, and almost immediately afterwards absconded.

There were other cheques as to which questions were raised by the respondents, but these questions have all been disposed of. The only thing that remains in controversy is whether the respondents were entitled to succeed in an action which they brought to have it declared that the bank were not entitled to debit the respondents' account with more than £2 in respect of the cheque I have described, or alternatively that the respondents were entitled to £118 as damages. Sankey, J., decided in favour of the respondents, and the Court of Appeal has affirmed this decision.

The question before us is whether the Courts below in dealing with the facts found as I have stated them came to a true conclusion as to what ought to result from them in law. In order to consider the proper conclusion it is necessary to ascertain what relevant principles have been established. The decided cases in point have been fully brought before your Lordships in the able arguments to which we have listened from the bar. After considering the authorities I do not, speaking for myself, entertain any doubt that certain important principles have at length been placed beyond controversy.

Ever since this House in 1848 decided *Foley* v. *Hill*, 2 H.L.C. 28, it has been quite clear that the relation between a banker and the customer whose balance he keeps is under ordinary circumstances one simply of debtor and creditor. But in other judgments, and notably by a later decision of this House (*Scholfield* v. *Earl of Londesborough*, 1896 A.C. 514), it was made equally clear that along with this relation and consistently with it there may subsist a second one. This further relation and the duties which arise out of it differentiate the additional relation between the customer who draws a cheque on his banker from any relation which exists between the parties to an ordinary negotiable instrument — between, for example, the acceptor of a bill of exchange and the person who buys it in the market in reliance on his signature. The acceptor of a bill of exchange may well be under the general obligation which affects persons who invite others to act upon their undertakings given for valuable consideration, not to express these undertakings in such a form as may naturally mislead those who act upon them. But the customer of a bank is under a yet more specific duty. The banker contracts to act as his mandatory, and is bound to honour his cheques without any delay to the extent of the balance standing to his credit. The customer contracts reciprocally that in drawing his cheques on the banker he will draw them in such a form as will enable the banker to fulfil his obligation, and therefore in a form that is clear and free from ambiguity. The correlative obligation is thus complementary to the obligation of the mandatory to apply the balance in paying without delay the cheques as and when presented to him. It may be that if the cheque is completely and distinctly drawn the mere fact that so much space has been left between the words and the figures on the one hand, and the marginal limits provided by the blank form on the other, as to have enabled a skilful forger to commit a crime by altering the amounts is not, if that be all, a breach of the obligation of the customer. People are not called on to anticipate the commission of forgery when they are exercising ordinary care in writing their cheques. To have left such spaces, if there is nothing more, may not bring the case within the category of those in which the customer is deemed to have failed in his duty to his banker. At all events the Judicial Committee of the Privy Council so decided in *Colonial Bank of Australasia* v. *Marshall*, 1906 A.C. 559, and I do not think that in order to dispose of the present appeal it is necessary to discuss the question how far that case binds us sitting here or what authority should be attributed to the judgment.

What I wish to make plain is that in the case of a cheque drawn by a customer on his banker there is a special duty to exercise care in the framing of what is a mandate—a special duty which does not exist in the same fashion in the instance of the acceptor

of a bill of exchange where the instrument is drawn for circulation among the members of the public generally, and is not a direction to a designated person to pay out of a balance for which he has to account a person who has a right to insist that the direction he receives to be acted on without any delay shall be so drawn as not to require exceptional consideration and so impose delay. The obligation of the customer to avoid negligence in this regard was, I think, well expressed by Kennedy, J., in *Lewes Sanitary Steam Laundry Company* v. *Barclay*, 11 Com. C. 255, when that very accomplished Judge defined it as including a "duty to be careful not to facilitate any fraud which when it has been perpetrated is seen to have in fact flowed in natural and uninterrupted sequence from the negligent act." The limitation of the liability to that which flows directly from the act established as negligent was obviously introduced by Kennedy, J., because of what has been repeatedly laid down in the decided cases as essential, that the negligence should be of such a kind that the loss has resulted immediately from it, and not from some intervening cause which, although it was able to produce its effect because of what the customer had previously done or omitted to do, was not itself brought into existence as the immediate and natural outcome of his action. Thus a man may be imprudent in leaving his cheque-book and pass-book in the hands of his clerk, who is thereby enabled to forge a cheque. But he is not liable for this reason, that the direct and real cause of the loss is the intervention of an act of wickedness on the part of the clerk which the law does not call on him to anticipate in the absence of obvious ground for suspicion. In *Kepitigalla Rubber Estates, Limited* v. *National Bank of India, Limited*, 1909, 2 K.B. 1010, Bray, J., stated the principle with conspicuous lucidity.

A cheque is a bill of exchange within the definition in the Bills of Exchange Act 1882. The statement in a cheque of the sum payable as expressed in words is therefore in accordance with section 9 of that Act instructive, inasmuch as in the case of a discrepancy the statement in words is to prevail over that in figures. Although a bill of exchange is a complete order for payment within the definition in section 3 even if the sum payable is stated in figures only, yet it may be that a banker would be justified in refusing to pay a cheque in which a statement in words had been omitted from the space provided for it, for, as I have observed above, the banker as a mandatory has a right to insist on having his mandate in a form which does not leave room for misgiving as to what he is called on to do, and there is nothing in the Act which in any way abrogates this right if by usage between himself and his customer he is entitled to expect the amount to appear in writing as well as in figures. The point does not, however, arise for decision in the present case. The statute also declares the law on another point which is not without bearing on the question before us. Sec. 20 (1) enacts that "where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer or the acceptor or an indorser; and in like manner, when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit." By sub-sec. 2 of the same section—"In order that any instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time and strictly in accordance with the authority given." These words probably do no more than express the law merchant as it stood prior to the statute. And they leave open for determination by the law outside the statute the question how the authority given is to be proved. I think that a banker has more than one answer to his customer if he is challenged for paying a cheque which on the face of it appears to have been duly filled in before signature; although in fact it has really been filled in subsequently and otherwise than in accordance with instructions given by the customer to his clerk when he signed it and handed it to the latter to complete and cash, with a restriction on the clerk's authority of which the banker knew nothing. If the customer objects to be debited with the amount of such a cheque on the ground that the clerk has inserted an amount which was not authorised, the banker may reply either of two things. He may say that the customer was under a legal obligation to see that any cheque which he signed in order that it might subsequently be filled in and presented was in order when presented, and that the existence of this obligation precludes him from setting up that the clerk had not authority in fact. The presentation at the counter of a cheque for a definite amount which he authorised to be presented in order to be cashed, although he actually intended that it should be cashed for a different amount, is representation that the bearer presenting it has authority to receive payment. The special duty of a customer towards his banker to which I have already referred is in itself a sufficient ground for attributing an intention to make such a representation, and I think that its inference may also be justified on the more general principle of estoppel by conduct enunciated by Parke, B., in the well-known case of *Freeman* v. *Cooke*, 2 Ex. 654, explained in this connection by Blackburn, J., in the Exchequer Chamber in *Swan* v. *North British Australasian Company*, 2 H. & C. 175. In *Freeman* v. *Cooke*, Parke, B., points out the difference between estoppel by record or by deed, as to which the rules of pleading which did not favour it are strict, and estoppel in *pais*, which is, generally speaking, a mere application not of any technical rule but of common sense. He quotes *Pickard* v. *Sears*, 6 Ad. & El. 474, 2 N. & P. 488, for the proposition that when a man by his words or conduct wilfully causes another to believe in the existence of a certain state of things, and induces him to act on that belief so as

to alter his own previous position, the former is precluded from averring against the latter a different state of things as existing at the same time. He explains that by "wilfully" is meant not necessarily that the party represents that to be true which he knew to be untrue, but that at least he meant his representation to be acted on, and therefore that whatever a man's real intention may be, if he so conducts himself that a reasonable person would take the representation to be true, and believe that it was meant that he should act upon it, and did act upon it, as true, the party making the representation would be precluded from contesting its truth. He goes on to add that conduct, by negligence or omission, where there is a duty cast upon a person by usage of trade or otherwise to make known the facts accurately may have the same effect.

The principle laid down by Parke, B., is one the recognition of which is essential to the conduct of business between the members of every well-ordered community. It is generally recognised in ordinary social life as imposing obligation of honour as much as of law. And it may be observed that it is hardly a rule of what is called substantive law in the sense of declaring an immediate right or claim. It is rather a rule of evidence, capable not the less on that account of affecting gravely substantive rights. The principle of estoppel thus explained is one which it appears plain that a banker in proper circumstances might invoke as a defence against his customer's claim.

I think, further, that the banker may alternatively say that even if the customer could otherwise *prima facie* be entitled to recover from him the amount paid on such a cheque as I have referred to, on the footing that the latter had no voucher which justified the payment, he (the banker) must be entitled in such a case to recover against the customer for the loss sustained by a negligent act, and that to prevent circuity of action he must be allowed to set up a defence based on his immunity from the loss so occasioned—(see the judgment of Cockburn, C.J., in the case of *Swan* v. *North British Australasian Company*, at p. 190).

The case of a customer drawing a cheque on a banker to whom he owes the duty referred to is different from that of, for example, an acceptor of a bill of exchange who has not such a special duty. And I should hesitate before saying that the proposition laid down by Lord Halsbury in *Scholfield* v. *Earl of Londesborough* in commenting on the unreported decision in *Adelphi Bank* v. *Edwards*, ought to be extended without qualification to a cheque drawn on a banker. Lord Halsbury cites with approval what Lindley, L.J., laid down in the latter case to the effect that it was wrong to contend that it is negligence to sign a negotiable instrument so that somebody else can tamper with it; and also a wider proposition of Bovill, C.J., in *Société Générale* v. *Metropolitan Bank*, 27 L.T.R. 849, at p. 856, that people are not supposed to commit forgery, and that the protection against forgery is, not the vigilance of parties excluding the possibility of committing forgery, but the law of the land. For the reasons which I have already given, I think that at all events in the case of cheques drawn by a customer on his banker this proposition cannot be applied without qualification by other principles which are plainly applicable. And even in regard to other kinds of negotiable instruments that must be remembered, which was pointed out by Moulton, L.J., in *Smith* v. *Prosser*, 1907, 2 K.B., at p. 752, that "if a person signs a piece of paper and gives it to an agent with the intention that it shall in his hands form the basis of a negotiable instrument, he is not permitted to plead that he limited the power of his agent in a way not obvious on the face of the instrument." The decision of this House in *Brocklesby* v. *Temperance Building Society*, 1895 A.C. 173, is a further illustration of the way in which the proposition of Lord Halsbury has to be taken as laying down only a general rule which is subject to qualification in special instances. There a father entrusted his son with title-deeds for the purposes of raising a limited sum. The son, by fraudulent concealment of the written authority given to him and by means of forgery, succeeded in borrowing a larger sum on equitable mortgage by deposit of the deeds, and appropriated it. It was held by Lord Herschell, Lord Watson, and Lord Macnaghten, following the well-known decision of Lord Cranworth in *Perry-Herrick* v. *Attwood*, 2 De G. & J. 21, that the father could not redeem the security without paying the lender all he had lent. The principle laid down by this House was that if a person permits title-deeds to be dealt with for the purpose of creating a charge of definite amount, and the limit is exceeded, he cannot, as against an innocent third party who has advanced his money without notice of the limit, complain that the authority which he gave has been exceeded.

No doubt this principle becomes applicable owing to the importance which the Court of Chancery always attached to the possession of title-deeds, but it furnishes none the less a further illustration of the caution which is required before relying on the general proposition to which I have referred.

I have come to the conclusion that if the principles which I have now stated are applied in the present case we cannot avoid the conclusion that the decision in the Courts below was erroneous. The respondents signed a cheque which was blank altogether as regards the words which according to usage were to be inserted to describe the amount, and as to the figure space was in such a condition that the figure "2" was inserted in a place where other figures could easily be added on each side. They left it to their clerk to fill up the cheque thus imperfect. It was drawn payable to bearer, and he was authorised to present it for payment. On the face of the cheque there was nothing of any kind to awaken any doubt in the minds of the officials of the bank that the cheque, which it was their duty to honour if in order without delay, was in

order. The bank paid the amount which it appeared to be drawn for over the counter in cash to the fraudulent clerk. Both upon the principles and upon the authorities I have referred to, it seems to me that the bank acted rightly in law in so doing. It was said in the judgments in the Court below that the insertion of the figure "2" in the cheque before signature was a limitation on the face of it of the authority of the clerk, and that therefore the real cause of the loss was not the failure to tell the bank of the restriction on his power, but his own fraud, for which the respondents were not liable. I cannot agree. So far as the bank was concerned, no limitation of the amount appeared on the face of the cheque when presented. Before signature there was that which, if left alone, would have been such a limitation. But then the respondents left the clerk in a position to make additions to the cheque, which was not only in an imperfect condition but had the limiting figure in such a place that the clerk could, by merely adding figures on each side make it disappear as completely as if it had never been inserted. He did make additions which when the cheque was presented at the bank had rendered the original limiting figure for all practical purposes non-existent. It was immediately due to the action of the respondents, and not to any other cause, that he was able to do this, and I am of opinion that in putting as much as they did within his power they took the risk of failure in the discharge of their duty to the bank of which they were customers. It follows that they cannot now recover the amount of a loss which was due to their own negligence.

Much was said in the course of the discussion, both at the Bar and in the Courts below, about the case of *Young* v. *Grote*, 4 Bing. 253. There the plaintiff, having occasion to leave home, signed a blank cheque and handed it to his wife with authority to fill it up for such sum as she might think requisite for the purposes of his business. She told a clerk to fill it up with the sum of £50, 2s. 3d. He filled in that sum and showed the cheque so made out and payable to bearer to the lady, who told him to get it cashed. The amount was inserted in words as well as figures, but the word "fifty" commenced in the middle of a line and had a small "f," and the figure "50" was inserted so far from the letter "£" as to permit another figure to be inserted in the interval. The clerk then fraudulently altered the words and figures by such insertions as made the cheque appear as one for £350, 2s. 3d., and obtained payment from the defendants, the plaintiff's bankers. The latter claimed to debit the plaintiff with the larger amount, and the dispute which arose was referred to arbitration. The arbitrator found that the plaintiff had been negligent in causing his cheque to be handed to the clerk in such a state that he could by the mere insertion of words make it appear to be a cheque for the larger sum. He appears to have stated the facts in his award, and to have referred the question whether they imported a duty, the breach of which amounted to negligence in law, for the opinion of the Court of Common Pleas. That Court decided that the bankers were not liable for the loss sustained by the plaintiff. The case is a very well-known one, and has been frequently discussed. I think that the outcome has been a substantial balance of authority in support of the result reached by the Court of Common Pleas. To me it appears that the conclusion come to by that Court was the right one. I think that the facts established were in some respect not so favourable to the bankers as those in the case now before us. The cheque as signed was complete, which is not the case here. But the small "f" in the word "fifty" was a feature of importance when taken in conjunction with the way in which the figure "50" was placed at a distance from the "£." There was also the finding of the arbitrator, which seems to have implied that he thought the plaintiff had been careless in his conduct. In these points the circumstances of the case differ from those in *Colonial Bank of Australasia* v. *Marshall*, to which I have referred earlier, and I see no reason for saying that the result reached by the Court of Common Pleas is inconsistent with the weight of subsequent authority.

But having gone so far I wish to add that I doubt whether the case is to-day a particularly instructive one. The judges who decided it did so on grounds which varied. Best, C.J., proceeded on that of negligence, and so did Grose, J. But Park and Burrough, JJ., appear to have based their conclusions mainly on the ground that the plaintiff signed an authority to the bankers so general that it covered what was done by his wife and the fraudulent clerk in combination.

I think that since *Young* v. *Grote* was decided the principles on which questions of this kind ought to be disposed of have been rendered much clearer than they were made in the judgments of the Court of Common Pleas. While I have no quarrel with the particular decision in the case I am therefore not disposed to rely on these judgments as containing any exposition of the law which is of much value to-day.

LORD SHAW—The facts of this case are very simple, and they have been told by your Lordships who preceded me. The case is one between banker and customer. It is almost as important, in view of the large citation of authority which has been made in the Courts below and at the bar, to keep in mind some things which are not part of this case as those things which are.

In the first place, not only is this not a case between the drawer and the acceptor of a bill or between the acceptor and a holder of the bill in due course, but it is not the analogue of such a case. The reason that I state this in the forefront of my opinion is that it disposes at once of a considerable body of authority which was cited as relevant to the consideration of the present suit. The distinction between a case of the latter sort and of the present was very clearly brought out in *Scholfield* v. *Earl of Londes-*

borough, 1896 A.C. 514, by Lord Watson and by Lord Davey. In the words of the former, which are directly applicable to the present case, "the duty of the customer arises directly out of the contractual relation existing at the time between him and the banker, who is his mandatory. There is no such connection between the drawer or acceptor, and possible future endorsees of a bill of exchange."

In the next place, on the facts before us themselves the elements are of the simplest. It is the case of a customer drawing a cheque in his own favour from his banker. There is no complication as to the cheque having passed to a payee, third party, nor is there any question accordingly as to any conduct or misconduct on the part of such payee. The case is direct in that sense. Nor is there any question of the genuineness of the signature; it is admitted to be genuine. I state this elementary point because it disposes again of a considerable portion of the authorities cited to us in regard to forged cheques. A cheque with the signature of a customer forged is not the customer's mandate or order to pay. With regard to that cheque, it does not fall within the relation of banker and customer. If the bank honours such a document not proceeding from its customer it cannot make the customer answerable for the signature and issue of a document which he did not sign or issue—the banker paying accordingly has paid without authority and cannot charge the payment against a person who was a stranger to the transaction.

This was the ground stated by Lord Chancellor Cranworth in *Orr* v. *Union Bank of Scotland*, 1 Macq. (H.L.) 513, at p. 522—"The payment of a forged cheque or order is not of itself any payment at all as between the party paying and the person whose name is forged. This is, I apprehend, the law both of England and Scotland."

The case then must be taken as the simplest one, namely, of a cheque duly signed, forwarded on behalf of the customer to the banker and honoured. There are in these circumstances reciprocal obligations. If the cheque do not contain on its face any reasonable occasion for suspicion as to the wording and figuring of its contents, the banker under the contract of mandate which exists between him and his customer is bound to pay. He dare not without liability at law fail in this obligation, and the consequences to both parties of the dishonour of a duly signed and *ex facie* valid cheque are serious and obvious. In the second place, if there be on the face of the cheque any reasonable ground for suspecting that it has been tampered with, then that in the usual case is met by the marking "Refer to drawer" and by a delay in payment until that reference clears away the doubt. Always granted that the doubt was reasonable, the refusal to pay is warranted. These obligations on the banker do not of course exist until after the cheque has been presented.

Upon the other part there are obligations resting upon the customer. In the first place his cheque must be unambiguous, and must be *ex facie* in such a condition as not to arouse any reasonable suspicion. But it follows from that that it is the duty of the customer, should his own business or other requirements prevent him from personally presenting it, to take care to frame and fill up his cheque in such a manner that when it passes out of his (the customer's) hands it will not be so left that before presentation, alterations, interpolations, &c., can be readily made upon it without giving reasonable ground for suspicion to the banker that they did not form part of the original body of the cheque when signed. To neglect this duty of carefulness is a negligence cognisable by law. The consequences of such negligence fall alone upon the party guilty of it, namely, the customer.

It appears to me that a crucial consideration in a case such as the present is this, namely, what is the point of time at which these respective obligations meet. The point of time is the presentation of the cheque. Not until that moment is the banker confronted with any mandate or order, and in my opinion the responsibility for the cheque and all that has happened to it between its signature and its presentation is not and ought not to be laid upon the banker. If at that moment three things are satisfied—namely, (1) that the cheque is duly signed, (2) that its appearance and statement of contents present no reasonable ground for suspicion, and (3) there are customer's funds available—then the banker is bound to pay. But if a banker were bound to inquire in regard to every cheque with quite genuine signatures what had been their history from the time that the customer lifted his pen from the cheque until the time when it was presented at the bank, banking business would be greatly impeded or impossible, and in my humble view it would be subjected to risks for which there is no foundation in legal principle.

It is entirely different, however, on the matter of this intervening period with regard to the obligations of the customer. When a customer makes a cheque payable to himself or bearer it is entirely at his option when to present it. The responsibility for what occurs between signature and presentation, a period in his control, lies entirely with him. If, as in the present case, he gives it to a clerk who tampers with it in such a way that no man of ordinary skill can find the roguery out, there does not seem to me to be any foundation in law for discharging the customer from the responsibility for these events or for laying them upon the banker, who was in no sort of position either of control over or participation therein.

It may be true—it is true in this case—that what happened in the meantime to increase the nominal value of the cheque and to deceive all parties was a crime. But it was a crime brought about during this period of the customer's responsibility, and as frequently happens in such cases the crime of the customer's own servant. Accordingly the condition of the cheque has been altered, not only during the period of the customer's responsibility, but by the act of some person with whom he had left the document in charge. If it is suggested that this

is a hardship upon the customer (abating for the moment the obvious consideration that it is a still harder for the banker) the answer of the general case is obvious—namely, that it is part of the customer's duty to fill up his cheque in such a way as to prevent roguery being made easy.

I do not here pronounce any judgment upon another type of case which may be figured. I refer to a case in which there has been no negligence on the part of the customer in the respect last alluded to, but in which erasures of great skill or deletions, say accomplished by chemical aid, have been made upon a cheque so as to undo all the care properly exercised by the customer in regard to its contents. Yet I cannot conceal from your Lordships that I should have the greatest doubt as to whether—this kind of roguery having been practised during that period of responsibility on the part of the customer to which I have referred—the customer would not also be liable. But the present is not a case of that kind. It is a case of negligence. And it is necessary to state again that in which the negligence consists.

The negligence consists in the breach of a duty owed by the customer to the banker. That duty is so to fill up his cheque as that when it leaves his hands a signed document it shall be properly and fully filled up, so that tampering with its contents or filling in a sum different from what the customer meant it to cover shall be prevented.

This is the sole ratio of the blank cheque decisions. The customer in such cases is bound to accept the responsibility for whatever the contents of the cheque may be if he has allowed a cheque to pass out of his hands blank. The present case was upon its facts a very near approach to that of a blank cheque; a figure "2" was upon it with space before and behind it which easily permitted the "2" being turned into "120." As for the words of the cheque, these were wholly blank, and the clerk to whom it was entrusted filled in the words "one hundred and twenty pounds." In that condition it was presented to the bank and honoured. I ask myself, so far as the banker was concerned, what difference did it make to his obligation to pay that between the time when his customer signed it and his customer's servant presented it the servant had filled up that cheque from being a blank to what it was, or from being a cheque with a figure "2" to what it was? And I ask myself with regard to the customer, what difference does it make in principle that the cheque is left by him entirely blank, or is left so blank that the contents finally appearing on it may so appear without arousing the slightest suspicion. There is a suggestion in some of the judgments below that the limitation of the authority to the clerk was a limitation to £2 because of the isolated figure "2." That was a limitation of authority only indicated to the clerk, and no care was taken that such a limitation of authority should reach the knowledge of the banker. So that in truth for all practical purposes, and so far as the banker was concerned, the same limitation of authority could have been pleaded although the figure "2" had not been inserted, and that by simply establishing that the clerk knew perfectly well that it was to be a £2 and nothing more. The roguery would have been little more and little different than it was whether the cheque had been entirely blank or with the figure 2 placed where it stood. It does not appear to me that on principle the duty of properly and fully filling up the cheque is met by what was done in the present case.

It is, no doubt, true that had the cheque been presented as signed it might have been honoured without impropriety, but when a cheque is not presented as signed and has been tampered with before presentation the question as to whether the customer has been negligent in a duty that lay upon him of so filling up his cheque as to prevent such tampering, if answered in the affirmative, absolves the banker if the latter has paid on an *ex facie* unsuspicious document.

I had intended to go over in detail the authorities from *Young* v. *Grote* downwards, but this is unnecessary, and I think it would be presumptuous in me to do so after the full treatment thereof by my noble and learned friend on the Woolsack. I express my entire agreement with his Lordship's narrative and conclusions upon that subject.

In particular, I desire to say that I think the case of *Young* v. *Grote*, 4 Bing. 253, was rightly decided. I may further indicate my view that many subsequent decisions which have referred to it have introduced a certain embarrassment into this portion of our law, not because of what was said in *Young* v. *Grote* itself, but of what later judges, even while approving the decision, thought must have underlain it. Not a word is said, for instance, in *Young* v. *Grote* about estoppel. It may be that some such doctrine was in the Judges' minds in deciding it. I am not enough of a psychological expert to say. It is enough for me, agreeing as I do entirely with the result of the decision, to observe that I think it safest to place the case upon the grounds on which the Judges themselves put it. It was treated by them as a case of negligence. As Best, C.J., said—"We decide here on the ground that the bank has been misled by want of proper caution on the part of his customer." Park, J., concurred with the arbitrator on the fact of negligence. "Great negligence" was the reason assigned by Gaselee, J.; and said Barrow, J., "The blame is all one side." That was the ground of judgment. I do not think it expedient to speculate upon anything deeper than or different from that, and, as I say, I think the course of law has been disturbed by speculations of that order. It is true that Best, C.J., founded upon certain sentences of Pothier, but these sentences seem like *Young* v. *Grote* itself to be perfectly apposite to the present case and to be entirely sound. They are these—"Cependant, si c'était par la faute du tireur que le banquier eût été induit en erreur, le tireur n'ayant pas eu le soin d'écrire sa lettre de manière à prévenir les falsifications; *puta*, s'il avait écrit en chiffres la

somme tirée par la lettre, et qu'on eût ajouté zéro, le tireur serait en ce cas tenu d'indemniser le banquier de ce qu'il a souffert de la falsification de la lettre, à laquelle le tireur par sa faute a donné lieu." I think this sentence of Pothier's may be held as a plainly sound statement of the law of England and Scotland on the subject in the present day.

Young v. *Grote* has been approved by a preponderating body of decisions and in the highest quarters since its date. I beg to say, however, that I express no surprise that great difficulty was felt upon this topic in the Courts below. That difficulty is caused for two reasons. The first I have already alluded to, namely, the speculations made in subsequent cases as to what underlay or was supposed to underlie that judgment. Alongside of these explorations *des arrières pensées* it is consoling to be able to place the few simple sentences in which the judges in *Young* v. *Grote* pronounced their own opinions. There was also a certain note of invitation to review in the language used by Lord Halsbury in *Scholfield's* case, 75 L.T.R. 254, although it has to be borne in mind that the learned Lord's doubts and queries were answered in the case itself by the other four learned Lords who sat with him.

A very substantial difficulty, however, has been caused by the case of the *Colonial Bank of Australasia* v. *Marshall*, 1906 A.C. 559, to which great respect has to be paid. In that case, as the judgment of Sir Arthur Wilson undoubtedly shows, the crux of the decision was the opinion expressed in these words, namely, that the duty which "subsists between customer and bank is substantially the same as that contended for in *Scholfield* v. *Earl of Londesborough* as existing between the acceptor and the holder of the bill." In my opinion this was erroneous, and I illustrate the error not only by the passage from Lord Watson already quoted but by the following citation from Lord Macnaghten. Referring to the report in Bingham he says—"The Court went very much on the authority of the doctrine laid down by Pothier that in cases of mandate generally, and particularly in the case of banker and customer, if the person who received the mandate is misled through the fault of the person who gives it, the loss must fall exclusively on the giver. That is not unreasonable, but the doctrine has no application to the present case. There is no mandate as between the acceptor of a bill and a subsequent holder." I humbly think the case of *Colonial Bank of Australasia* v. *Marshall* to be in conflict with the great and binding authority of *Scholfield*, and I do not see my way to follow it.

I agree with the motion proposed from the Woolsack.

LORD PARMOOR—The facts necessary to consider for the decision of this appeal can be shortly summarised. One of the respondents, leaving the office in a great hurry, signed a cheque form, leaving a blank in the space left for words and inserting the figures "£2 0 0" in the space left for figures. The clerk in whose hands the cheque was left for presentation for payment added the words "one hundred and twenty pounds" in the space left for words, and the figures "1" and "0" on either side of the figure "2." The respondents had confidence in the clerk, and were entitled to consider him an honest man and to rely upon his honesty. It is unnecessary to state the facts in greater detail, but they are set out in the judgment of Swinfen Eady, L.J., in the Court of Appeal.

Two points arise for decision—(1) What was the mandate which the customer sent to his banker? (2) Was there a breach of the duty which a customer owes to his banker in the preparation and issuing of a cheque on an ordinary cheque form, and if so, did such breach of duty directly conduce to the payment which the appellants claim to debit against the account of the respondents? Sankey, J., decided in favour of the respondents on both points, and his decision was unanimously upheld in the Court of Appeal.

The decision of the appeal depends upon the special relationship of a customer and banker. No doubt assistance may be obtained from cases which have arisen as between a holder who is not the drawer and an acceptor of a bill of exchange, but in that case there is no contractual relationship between the parties such as exists between a customer and a banker. The relationship between a customer and a banker is that of creditor and debtor—*Foley* v. *Hill*, 2 H.L.C. 28. The relationship implies, however, a special duty on the customer to use due caution in the preparation and issue of a mandate to his banker requiring him to make a payment as his mandatory to the debit of his account. In ordinary business the customer issues his mandate as a cheque on a cheque form which contains two spaces—one for stating the sum which he desires his banker to pay on his behalf in words, and another for stating the sum in figures. If the cheque is presented for payment in proper form there is a *prima facie* obligation on the banker to pay the sum inserted in words and figures, and he has a corresponding right to debit this sum to the account of his customer. The risk of paying a forged mandate ordinarily rests upon the banker, but there are exceptional instances in which a banker is entitled to charge the account of his customer although the amount has been paid by him on a forged document.

The first principle on which the appellants rely is that the respondents entrusted to their clerk an authority to fill up the cheque under such conditions that they are responsible for the amount fraudulently inserted, and are precluded from showing that the authority of the clerk was limited by instructions, since such limitation was not apparent on the face of the document and had not been communicated to them in any way. It would, I think, make no difference whether the action of the clerk was due to carelessness or fraud. This principle has been variously traced to the law merchant, or to the common law doctrine of estoppel, but the importance lies not so much in the origin of the principle as to the nature of the conditions under

which it is applicable. The cases show that these conditions can be inquired into—*Lloyd's Bank* v. *Cooke*, 1907, 1 K.B. 794; and *Smith* v. *Prosser*, 1907, 2 K.B. 752.

What, then, are the conditions in the present case? If the respondents had signed a cheque in blank leaving it to be filled up by the clerk, and the clerk had carelessly or fraudulently filled it up in excess of the amount of his authority, the appellants would have been entitled to debit the forged amount to the account of the respondents. It is well established that in such a case it would not have been open to the respondents to adduce evidence that they had limited the authority of their clerk in a way not appearing on the face of the instrument, and of which the appellants had not received any notice. On the other hand, if a cheque is completely filled up before issue by a customer, and then subsequently altered by the fraudulent or careless action of his agent, to whom it has been entrusted for presentation to a bank, the loss, so long as it is due to a mere alteration in the units or figures or in both, and the customer had not committed any breach of his duty in his relationship to the banker, would fall on the banker—*Colonial Bank of Australasia* v. *Marshall*, 1906 A.C. 559. The banker would in many cases have no means of detecting whether the fraud or carelessness had been committed in the filling up of a blank cheque or in the alteration of a filled-up cheque, but the question depends on the relationship of agency. Moulton, L.J., in the case of *Smith* v. *Prosser*, says—"The law stands thus—If a person signs a piece of paper and gives it to an agent with the intention that it shall in his hands form the basis of a negotiable instrument, he is not permitted to plead that he limited the power of his agent in a way not appearing on the face of the instrument." It was held both by Sankey, J., and the Court of Appeal that by the insertion of "£2 0 0" in figures a limitation did appear on the face of the cheque, and that therefore the authority of the clerk was limited within the principle expressed by Moulton, L.J.

It is, however, I think necessary to consider more closely the nature of the actual transaction. The document handed by the respondents to their clerk, and intended by them to form the basis of a mandate to the appellants, was a cheque form signed by the respondents with the space for words left blank and "£2 0 0" inserted in the figure space. If such a cheque form had been presented to a bank, a banker would have probably refused to act upon it, and in ordinary course would have endorsed the form "Refer to drawer." It was wanting in an essential particular before the cheque form could be regarded as a mandate for payment—namely, the statement of the amount in the space for words. The form could only be converted into a mandate which the mandatory would be likely to honour by the clerk filling up the cheque form so as to make it on its face a complete cheque. Section 20 of the Bills of Exchange Act was not relied on before this House. In my opinion it is not directly applicable. I agree, however, with Bray, J., that section 20 is founded on a principle of law which applies to this case, and that the clerk may under the circumstances of this case be regarded as in the same position as the holder of a negotiable instrument. Section 20 provides that where a bill is "wanting in any material particular the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit," and by the proviso in subsection 2, "as against a holder in due course the drawer is precluded from denying the authority." The cheque was wanting in a material particular—namely, the insertion of the amount in the space for words—and the clerk must be treated as having authority to fill up this space in any way he thinks fit. So soon as the blank space has been filled up in words by their agent the respondents are responsible to the same extent as if they had themselves inserted the words. In my opinion the bankers would have been justified in not accepting as a mandate for payment a cheque form in which the amount inserted in the space for words differs from the amount inserted in the space for figures. The same question therefore arises as in the case of an agent entrusted with the presentation of a cheque for payment, where the cheque form has been handed to him with a different amount in the space for words from that in the space for figures. In such a case some alteration must necessarily be made before the cheque form becomes an effective mandate. In my opinion, as against the banker, the customer under these circumstances must be taken to have given his agent authority to issue a mandate complete on its face, and that he is precluded from producing evidence to show that he never gave such authority.

In *Freeman* v. *Cooke* (2 Ex. 654) Parke, B., in delivering the judgment of the Court, says in reference to estoppels *in pais*—"For instance, where a man represents another as his agent in order to procure a person to contract with him as such, and he does contract, the contract binds him in the same manner as if he made it himself and is his contract in point of law, and no form of pleading would leave such a matter at large and make the jury to treat it as no contract." A similar question came before Bigham, J., in the case of *Union Credit Bank* v. *Mersey Docks and Harbour Board* (1899, 2 Q.B. 205). In this case the delivery order was signed by the goods owner containing the name of the ship and the number (246) but leaving a blank in the column provided for designating the quantity of the goods. Nicholls, to whom the delivery order was handed, fraudulently filled in 263 in the number column and eighteen hogsheads in the quantity column. By means of this forged order Nicholls obtained delivery of 18 hogsheads of tobacco warehoused by the Mersey Dock Board. Bigham, J., held that the document handed to Nicholls was not a delivery order but a delivery order form, and that if it had been presented as originally signed

the warehousemen would probably have refused to act upon it since it was wanting in an essential, namely, the statement of the quantity of goods. He held, further, that it became a valid delivery order under the authority which the plaintiffs had conferred upon their agent to convert the order form into an order, and that under such circumstances the plaintiffs could not be heard to say that they had instructed their agent to perfect this order in a particular way. Bigham, J., in giving his decision referred to the case of *Young* v. *Grote*, which was so constantly referred to in the argument before your Lordships, adopting the opinion of Parke, J., that the cheque was a genuine order of Young because he had authorised his wife to fill it up, and that when she had filled it up it became his genuine order. It is said that the facts in *Young* v. *Grote* do not support a judgment based on this ground, but the opinion of Bigham, J., is not inconsistent with the opinion expressed by other judges of high authority. In *Robarts* v. *Tucker*, 16 Q.B. 560, Parke, B., in giving the judgment of the Court, says—"In *Young* v. *Grote* the customer had signed blank cheques and left them with his wife to fill up. She filled them up in such a manner that the holder was enabled to add to the amount, and it was held that the bankers who had paid the larger amount might charge their customer with it. This was in truth considering that the customer had by signing a blank cheque given authority to any person in whose hands it was to fill up the cheque in whatever way the blank permitted." In *Scholfield* v. *Earl of Londesborough*, 1896 A.C. 514, Lord Macnaghten says—"Other judges, including Parke, B., himself in the earlier case of *Robarts* v. *Tucker*, have held that *Young* v. *Grote* is to be supported on the ground that the customer had by signing a blank cheque given authority to anyone in whose hands it was to fill it up in any way the blank permitted." I do not overlook that Lord Macnaghten had also referred to the opinion of Lord Cranworth, L.C., in *Orr* v. *Union Bank of England*, 1 Macq. H.L. 513, and *Bank of Ireland* v. *Trustees of Evans' Charities*, 5 H.L.C. 389, and to the observations of Parke, B., in delivering the opinion of the Judges in the last case, but his own opinion appears to agree with that of Lord Watson, who says in his judgment—"The reported opinions of the learned Judges leave it doubtful whether this decision in *Young* v. *Grote* went upon the doctrine of Pothier, or upon the ground that the customer by signing a blank cheque had undertaken liability for any sum which might be filled in before it was presented for payment."

The second point to consider is whether the respondents did commit a breach of the duty which they owed to the appellants as their bankers in and about the preparation and issue to them of their mandate to charge their account. Apart from special contract or some accepted course of dealing between the parties it is the duty of a customer to use due caution in the preparation and issue of a mandate to his banker to charge his account at the bank, and if he commits a breach of this duty, and thereby misleads his banker to make a payment on a forged instrument, and such payment follows in natural and uninterrupted sequence from such breach, the consequent loss falls not on the banker but on the customer. The principle is well established that the negligence which would deprive the customer of his right to insist that payment on a forged cheque is invalid must be negligence in or immediately connected with the actual transaction—see *Bank of Ireland* v. *Trustees of Evans' Charities*, opinion of Parke, B.; *Swan* v. *North British Australasian Company*, 2 H.L.C. 175, per Blackburn, J. Lord Halsbury, in *Bank of England* v. *Vagliano*, 1891 A.C. 107, says—"The carelessness of the customer or neglect of the customer to take precautions, unconnected with the act itself, cannot be put forward as justifying his own default." In the present instance the negligence alleged on the part of the customer, if there has been negligence, is certainly immediately connected with the transaction itself—namely, in the preparation and issue of the cheque form for presentation to the banker.

The next question therefore which arises is whether the act of the respondents did amount to negligence. In my opinion the answer is in the affirmative. I have already stated my view that where a cheque form is handed to a clerk for issue with a blank in the space intended for the insertion of the amount in words there is authority for the clerk to fill up the blank in any way he pleases, and that when the amount has been so filled in it must be taken as the genuine entry of the customer. Therefore the conditions in the present case are similar to those which would apply where the customer has handed a cheque to his agent, having filled up "one hundred and twenty" in the space for words, and having at the same time placed "2 0 0" in the figure space in such a position that there is no difficulty in altering "2" into "120." Can it be said that this is not negligence in the customer? Such conduct appears to me to be unquestionably negligence in the actual transaction. It is not material to show that in other respects the respondents acted in a reasonable manner, being justified in the confidence which they placed in their clerk. It is, however, not sufficient to show negligence in or immediately connected with the actual transaction unless it can further be shown that the act of the banker in making the payment of which the customer is making complaint followed in natural and uninterrupted sequence from the negligent act. In the present case the clerk, who under the conditions already referred to fraudulently altered the cheque form, presented the cheque for payment. It appears to me that he was enabled to present it in a fraudulent form as the direct result of the customer's negligence, and that thereby the banker was directly misled into making a payment on the forged cheque. If this is a correct interpretation of the conditions the respondents are not entitled to succeed. An estoppel is created by their negligence in a duty which they owed to their bankers in the

actual transaction in question with the result that evidence is not admissible to prove that the clerk acted fraudulently and in excess of his authority.

In the hearing of the appeal a very large number of cases were referred to in the exhaustive arguments of counsel. I desire only to refer further to two of these cases. It must be taken that the rule expressed by Ashurst, J., in *Lickbarrow* v. *Mason* (2 T.R. 63) is too wide when he says "he may lay it down as a broad general principle that whenever one of two innocent parties suffers by the act of a third person, he who has enabled such person to occasion the loss must sustain it," and that the accurate rule is stated by Blackburn, J., in *Swan* v. *North British Australasian Company*, 2 H.L.C. 175, who, referring to the judgment of Wilde, B., says "That he omits to qualify the rule (he had stated) by saying that the neglect must be in the transaction itself and be the proximate cause of leading the party into that mistake, and also must be the neglect of some duty to the person led into that belief, or, what comes to the same thing, to the general public of whom that person is one, and not merely neglect of what would be prudent in respect to the party himself, or even of some duty owing to third persons with whom those seeking to set up the estoppel are not privy." The other case to which I would refer is *Young* v. *Grote*. This has been referred to in a great number of subsequent cases, and in the main with approval; but whatever may have been the basis of decision in that case the principles involved in the duty which a customer owes to his banker have been further defined and made more exact in a number of subsequent decisions.

In my opinion the appeal should be allowed.

Their Lordships allowed the appeal, with expenses.

Counsel for the Appellants—D. Hogg, K.C.—A. Neilson. Agents—Morley, Shirreff, & Company, Solicitors.

Counsel for the Respondents—H. Gregon, K.C.—Jowitt. Agent—E. H. Coopman, Solicitor.

HOUSE OF LORDS.

Monday, July 8, 1918.

(Before the Lord Chancellor (Finlay), Viscount Haldane, Lords Atkinson, Sumner, and Parmoor.)

ATTORNEY-GENERAL *v.* BENJAMIN SMITH & COMPANY.

(On Appeal from the Court of Appeal in England.)

Ship—Bill of Lading—Deviation—Effect of Clauses of Exception.

Goods were shipped for carriage from Australia to London by a steamer employed by the Crown as a transport under a bill of lading which conferred on the carriers liberty, *inter alia*, "to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages or otherwise howsoever given by H.M.'s Government. . . ." The ship was used for about 3 months as a warehouse at Imbros and Mudros for meat, part of which was transhipped from other vessels. On proceeding with the voyage the ship was torpedoed by the King's enemies and the goods lost. A petition of right was presented by the respondents, the shippers, claiming that the use of the ship as a warehouse constituted a deviation from the voyage and precluded the appellant from relying on a clause in the bill of lading exempting him from liability for damage by the King's enemies.

Held that the use of the ship as a warehouse was inconsistent with the main object of the contract and therefore did not come under the exceptions reserved in the bill of lading.

Decision of the Court of Appeal, 116 L.T.R. 515, *upheld*.

The facts appear from their Lordships' considered judgment.

Lord Chancellor (Finlay)—This appeal arises out of a petition of right filed by Benjamin Smith & Company, now the respondents, against the Attorney-General, on behalf of His Majesty, to recover damages for the loss of fifty bales of sheepskins carried on board the steamship "Marere" under a bill of lading signed on behalf of His Majesty by agents of the Commonwealth Government of Australia. The "Marere" was sunk in the Mediterranean by a German submarine, and the sheepskins were lost. The bill of lading contained an exception from liability on the part of the Crown for any loss caused by acts of the King's enemies. The question on the appeal is whether, as contended by the petitioners, the benefit of this exception has been lost owing to a deviation and change in the character of the adventure alleged to have taken place before the "Marere" was torpedoed.

The "Marere" had been requisitioned by the Crown at the beginning of the war in August 1914, and was being worked for the Crown under this requisition when the petitioners' goods were shipped. The shipment took place at Melbourne under a bill of lading dated the 14th July 1915, signed by authority of the Commonwealth Government of Australia, and held by the petitioners. The bill of lading expressed that there had been shipped on board A 21 "Marere," bound for London "*via* ports subject to Government requirements, with liberty to receive and to discharge goods and passengers, and to take in coal, cargo, supplies, and for any other purpose, and to call at any port or ports in any order, and to sail with or without pilots, and to tow and assist vessels in all situations, and to deviate for the purpose of saving life and property, the following goods, namely, fifty bales sheepskins, being marked and numbered as in the margin, and to be delivered (subject to the exceptions and conditions hereinafter mentioned)