

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Imperial Bank of Canada v. The Bank of Hamilton, from the Supreme Court of Canada; delivered the 13th November 1902.

Present at the Hearing :

LORD MACNAGHTEN.
LORD ROBERTSON.
LORD LINDLEY.
SIR ARTHUR WILSON.

[*Delivered by Lord Lindley.*]

The question raised by this Appeal is whether the Bank of Hamilton is entitled to recover from the Imperial Bank of Canada a sum of 495 dollars paid to it in respect of a cheque under the following circumstances.

One Bauer was a customer of the Bank of Hamilton and he drew a cheque upon that Bank for five dollars. The word five was written and a considerable space was left between that word and the next words printed on the cheque. The cheque was dated the 25th January 1897 and on that day Bauer took it to the Bank of Hamilton and got it marked or certified with the Bank's stamp; he then took it away with him. The effect of this marking or certifying was examined and explained by this Board in *Gaden v. Newfoundland Savings Bank* (1899 A. C. 281, on p. 285). The effect was to give the cheque additional currency by showing on its face that it was drawn in good faith on funds sufficient to meet

its payment and by adding to the credit of Bauer who drew it the credit of the Bank of Hamilton on which it was drawn. The cheque was a good cheque for five dollars, and if it had not been altered the Bank of Hamilton would have paid it as a matter of course and no difficulty would have arisen. But after Bauer had got it marked he wrote in the word "hundred" after the word five. The cheque then appeared to be a certified cheque for 500 dollars. There can be no doubt that the condition of the cheque when certified afforded opportunity for this fraudulent alteration; and if the principle laid down in *Young v. Grote* 4 Bing. 253 could still be acted upon the Bank of Hamilton would as between themselves and an innocent holder for value be estopped from denying that the cheque was a certified cheque for 500 dollars. But after the decision of the House of Lords in *Scholfield v. Earl of Londesborough* 1896 A. C. 514 it was hopeless to contend that by the law of England the Bank of Hamilton was not at liberty to prove that the cheque had been fraudulently altered after it had been certified by the Bank. Whether the French law which prevails in Lower Canada is the same in this respect as the law of this country and of Ontario has not to be determined; for the French law has no application to this case.

Bauer took the cheque as altered to the Imperial Bank of Canada and opened an account with it. The cheque was placed to his credit; he forthwith drew cheques upon the account so opened and those cheques were honoured in the usual course of business. The cheque in question was passed by the Imperial Bank of Canada through the clearing house at Toronto and was paid by the Bank of Hamilton on the morning of the 27th January 1897 the fraud not having been then discovered.