

(1973) 06 KAR CK 0005
In the Karnataka High Court
Case No : Regular First Appeal No. 56 of 1968

Canara Bank

APPELLANT

Vs

Canara Sales Corporation and Others

RESPONDENT

Date of Decision : 25-06-1973

Acts Referred:

Limitation Act, 1908 — Section 120, 60

Citation : (1975) 45 CompCas 238 : (1973) ILR (Kar) 1030 : (1973) 2 MysLJ 156

Hon'ble Judges : E.S. Venkataramaiah, J;B. Venkataswami, J

Bench : Division Bench

Advocate : S.G. Sundaraswamy, K. Ramakamath and M.R. Kamath, for the Appellant; K. Krishnamurthy, Narasappayya and K. Shivashankar Bhat for the respondent No. 1 and T.S. Pai, for the respondent No. 2, for the Respondent

Judgement

E.S. Venkataramaiah, J.—The above appeal is filed against the decree passed in the suit, Original Suit No. 72 of 1962, on the file of the Civil Judge, Mangalore, by the first defendant therein, the Canara Bank Ltd. After the nationalisation of the said bank, the Canara Bank has been brought on record as the appellant. The suit was instituted for and on behalf of the Canara Sales Corporation Ltd., Mangalore, by its managing director, V. S. Kudva, who died during the pendency of the suit. After his death, the suit was continued by L. V. Kudva as the managing director of the plaintiff. The second defendant was one Y. Venkatesha Bhat who was the chief accounts officer of the plaintiff up to the year 1961. The second defendant died during the pendency of this appeal and his legal representatives have been brought on record.

2. The suit was instituted against defendants Nos, 1 and 2 for recovery of a sum of Rs. 3,26,047.92 on the basis of the following allegations made in the plaint: The plaintiff is a company having its head office at Mangalore and dealing mainly in motor vehicle parts and other requirements of motor vehicles. It had opened a current account in the Mangalore Bunder branch of the first defendant-bank. V.

S. Kudva, who was the managing director of the plaintiff, and K. S. Bhandarkar, who was the general manager of a sister concern of the plaintiff, had been authorised to operate on the said current account of the plaintiff with the first defendant. The second defendant was working as the chief accounts officer of the plaintiff from 1950, and in that capacity he was attending to the maintenance of accounts of the plaintiff and was also in charge and custody of the cheque books issued by the first defendant-bank to the plaintiff. In March, 1961, the second defendant was absent from his duty for some time and during the period one Appuraya Shenoy, who was the assistant of the second defendant, was asked to bring the accounts of the plaintiff up to date. While doing so, the said Shenoy noticed certain discrepancies with regard to two cheques bearing Nos. 625061 and 625070 for Rs. 8,364.12 and Rs. 6,774.05, respectively. The counter-foils of the above cheques showed that they had been drawn in favour of the Canara Industrial and Syndicate Bank (now known as " Syndicate Bank ") and were for sums of Rs. 1,000 each. But, as there were no vouchers in support of the said payments to the Syndicate Bank, Shenoy made further enquiry regarding them. His enquiry disclosed that in fact the two cheques had been drawn for Rs. 8,364.12 and Rs. 6,774.05 by the second defendant and that the said amounts had not been shown in the accounts of the plaintiff. While as against cheque No. 625061 encashed on February 3, 1961, there was a debit entry of Rs. 1,000 as against the Syndicate Bank in the rough day-book maintained by the second defendant, there was no entry at all of any sort in respect of cheque No. 625070. In order to ascertain the truth about the withdrawal of the sums under the two cheques referred to above, the second defendant, who was away at Bangalore, was asked to go to Mangalore immediately by two telegrams which were sent on March 17, 1961, and March 22, 1961. It was not known at that time that the two cheques had been forged by somebody. Though the second defendant replied that he would be reaching Mangalore shortly, he did not actually meet V. S. Kudva till March 24, 1961. On that day one more cheque bearing No. 908792 drawn on the first defendant for a sum of Rs. 8,645.65 came to the notice of V. S. Kudva. The counter-foil of the said cheque showed that it had been drawn for a sum of Rs. 3,000 in favour of the Syndicate Bank. Actually, the said cheque had been drawn for Rs. 8,645.65 by the second defendant and he had received the said amount from the first defendant as the " payee" under the said cheque. Thereupon, V. S. Kudva went to the office of the first defendant on March 24, 1961, and inspected the three cheques. He found that the signatures on the three cheques purporting to be his signatures were not really his signatures and that the sums drawn under the three cheques had all been utilized by the second defendant. That on March 25, 1961, a complaint was lodged by the plaintiff with the District Superintendent of Police for investigating into the case. As V. S. Kudva found that the account books maintained by the second defendant contained incorrect entries, he appointed a firm of chartered accountants known as S. Kaliswaran and S. Narayan to conduct a special audit of the accounts of the plaintiff for the years 1957-58 to 1960-61. The said special audit disclosed that during those four years, the second defendant had drawn in all a sum of Rs.

3,24,047.92 under 42 cheques (including the three cheques referred to above) particulars of which are mentioned in Schedule " A " attached to the plaint from the account of the plaintiff with the first defendant and that all the said cheques were forged ones. It was also clear that the said amount had not been utilized for the purpose of the plaintiff though in most of the instances it had been falsely shown in the accounts of the plaintiff which had been written by the second defendant himself that the monies had been received and were spent for the purpose of the plaintiff. It is the case of the plaintiff that the payments made on the 42 forged cheques by the first defendant were all unauthorised ones and that the first defendant is liable to pay the sums covered by the said cheques to the plaintiff and that the second defendant is jointly and severally liable to pay the said amount. It is also pleaded, inter alia, that the plaintiff had not in any way acquiesced in or ratified the payments made by the first defendant under the said 42 cheques and that there was no negligence which would disentitle the plaintiff to claim the said amount. The plaintiff instituted the above suit for recovery of the above sum after its demand for its payment was not complied with by the defendants.

3. The first defendant, among other pleas, raised the following pleas in the course of its written statement; (1) that the cheques were not forged ones; (2) even if the cheques were forged ones, the plaintiff was not entitled to recover the amounts on account of its own negligence ; (3) that there having been a settlement of accounts from time to time between the parties, the plaintiff was not entitled to reopen the same and claim the sums paid under the cheques in question ; and (4) the suit was barred by limitation. The second defendant pleaded that the cheques were not forged ones and that the amounts recovered by the cheques were utilized for the purpose of the plaintiff.

4. On the basis of the above pleadings, the parties went to trial. The records disclose that it was the first defendant alone that contested the suit. The second defendant does not appear to have taken any serious interest in the conduct of his defence. The trial court after negating the contentions raised by the defendants, passed a decree against the defendants for a sum of Rs. 3,24,047.92 with current interest at six per cent. per annum from the date of suit, i.e., August 20, 1966. The defendants were also directed to pay the costs of the suit. Aggrieved by the decree passed by the trial court, the first defendant has filed this appeal.

5. Sri S. G. Sundaraswamy, the learned counsel for the first defendant, formulated the following points for our consideration in the above appeal:

(1) that it had not been established that the 42 cheques in question were forged ones ;

(2) that the plaintiff had the benefit of the sums recovered by 42 cheques in question;

(3) that even if the said cheques were forged ones, the plaintiff should fail on

account of its acquiescence in and the ratification of the payments made by the first defendant under the said cheques ;

(4) that the plaintiff was estopped from claiming the amounts by reason of his own negligence;

(5) that in view of the plaintiff not having raised any objection at the appropriate time as to the correctness of the accounts, even though the plaintiff was being supplied by the first defendant the monthly statement of accounts and half yearly accounts over a period of nearly four years in respect of all the entries in the account of the plaintiff, the plaintiff should fail; and

(6) that the suit was barred by limitation.

6. We shall examine the above contentions seriatim.

7. We shall first take up for consideration the question whether the 42 cheques which are marked as exhibits P-2 and P-43 are forged ones. All these cheques are taken out of the cheque books issued by the first defendant to the plaintiff. They bear the seals of the plaintiff and the purported signatures of V. S. Kudva. The question for decision is whether the signatures "V.S. Kudva" appearing on these 42 cheques are of V.S. Kudva, the managing director of the plaintiff. It was argued by Sri V. Krishnamurthy, the learned counsel for the plaintiff, that, having regard to the relationship of banker and customer that existed between the first defendant and the plaintiff, the burden of showing that the cheques, on the basis of which payments had been made, were genuine ones was on the first defendant and that the plaintiff was under no obligation to prove that the cheques were forged ones. In support of the above contention, reliance was placed by him on a decision of this court in Town Co-operative Bank Ltd. v. Bank of Mysore Ltd., in which it was held that the burden of proving that the cheque was a genuine one was on the banker and not on the customer. It is unnecessary to examine in any detail the question of burden of proof on the above issue in the circumstances of this case because both the parties have led evidence on the above question and we are of opinion that on the material placed before the court it is possible to record a finding on the genuineness of the cheques without depending upon the rule that the party on whom the burden lies should fail, if there is no evidence on the question to be proved.

8. Exhibit P-1 is produced by the Syndicate Bank and it contains the specimen signatures of V. S. Kudva taken on September 25, 1959. Exhibit P-49 is another specimen signature card produced by the first defendant and it contains the specimen signatures of V. S. Kudva, the managing director of the plaintiff. It is dated September 10, 1957. Exhibits D-4 to D-20 are several documents containing the signatures of V. S. Kudva. The genuineness of the signatures of V. S. Kudva in these documents is not questioned before us. The disputed signatures are those which are found on exhibits P-2 to P-43. In support of its case, the plaintiff has examined P.W. 4, Sanjeeva V. Kudva, who is the son of V. S. Kudva, and P. W. 2, B. N. Sitharam, who was working as the handwriting

expert to the Government of Mysore, till about 1964. P. W. 4 has stated that the signatures on exhibits P-2 to P-43 were not the signatures of V. S. Kudva. He has, however, identified that the signatures in exhibits D-4 to D-19 were of V. S. Kudva. Similarly, he has stated that the signature appearing on exhibit P-144 was also that of his father. In the course of cross-examination he has no doubt stated that the hands of his father, V. S. Kudva, were shaking, but while writing his hands were not shaking. Nothing turns really on the above answer of P. W. 4 because it is seen from the examination of the signatures which are either admitted or proved as those of V. S. Kudva that the said shaking of his hands had no effect on his writing. All the signatures either admitted or proved as those of V. S. Kudva appear to be those of a person with a settled hand-writing and all of them contain certain common characteristics to which we shall refer later. P.W. 2 has stated that he received a requisition in connection with Crime No. 276/61 of Kadri Police Station to give his opinion about the genuineness of the signatures appearing in exhibits P-2 to P-43 and that he had been supplied with specimen signature cards, exhibits P-44 to P-48, P-49, P-50 and P-51 to P-54. It may be mentioned here that exhibits P-44 to P-48 are five cards containing the specimen signatures of V. S. Kudva and their genuineness is not questioned before us. Similarly, the signatures of V. S. Kudva found in exhibits P-51 to P-54 which are four cheques drawn on the first defendant are also not questioned. After examining the signatures purporting to be those of V. S. Kudva in exhibits P-2 to P-43 and comparing them with the admitted signatures, P.W. 2 was of the opinion that the signatures appearing on exhibits P-2 to P-43 were not those of V. S. Kudva. In the course of his examination P.W. 2 has given the following reasons :

" (a) In the disputed series, the terminals of the strokes are blunt, while the terminals in the admitted signatures are tapered.

(b) There is much tremor and hesitation in the disputed signatures, while the line quality is smooth in the admitted signatures,

(c) In disputed signatures, the speed is very slow, that in admitted ones, it is fast.

(d) In disputed signatures, first letter " V " is found with a wide are while in the admitted ones, it is narrow,

(e) Initial strokes in the letter "V is of oval formation in the disputed ones, while it is elongated one in the admitted.

(f) There is more of curve formation in letter " S " in the disputed ones, while it is not so in the admitted ones but it is almost vertical.

(g) The formation of arcs are differently formed between the letters " S " and " V " in the disputed and admitted signatures.

(h) There is unusual pen lift at letter " D " in the disputed ones, while it is not so in the admitted ones, and it is a continuous signature in the admitted ones,

without a pen lift.

(i) There are retouching in disputed ones, while there are no retouching in the admitted ones.

(j) In the letter "A" the terminal strokes form the downward stroke in the disputed ones, while in the admitted ones terminal is a horizontal stroke.

(k) At the inception of the terminal of letter " A " there is no retrace or eyelet in the disputed ones, while there is eye-let formation or retrace in the admitted ones."

9. P. W. 2 has stated that he was examined in two criminal cases which were instituted against the second defendant in respect of two cheques which are stated to have ended in the conviction of the second defendant. Although he has been cross-examined at length, we find that the opinion given by P.W. 2 remains unshaken. As against the evidence of P.W. 2, the first defendant has examined another hand-writing expert as D.W. 3. We have been taken through the evidence of the said witness. We have compared the signatures in exhibits P-2 to P-43 with the- signatures which are either admitted or proved. We are of opinion that there are two striking characteristics in the admitted signatures of V. S. Kudva appearing in the opening letter " V " and the last letter " a ". The opening stroke of the letter "V " is slightly curved and there is a deep depression at the bottom of the said letter. But in the disputed signatures, the opening stroke is almost straight and the stroke at the bottom of the letter " V " almost makes it appear as " U ". The said characteristics are noticed by P.W. 2 also while giving his opinion. In so far as the letter " a " is concerned, we find that in all the disputed signatures, the terminal stroke is in the nature of a downward stroke whereas in the admitted or proved signatures, the said terminal stroke is a horizontal one. The answers given by D.W. 3 with regard to these two characteristics are not satisfactory. It is well-known that the court has got ultimately to decide the question whether a signature is forged one or not by relying upon its own impression gathered from a comparison of the disputed signature with the admitted or proved signature and, in doing so, the court may seek assistance from the opinion of hand-writing experts. It is also necessary for the court to have regard to the surrounding circumstances of the case before expressing any opinion on the said question. It is seen from the records produced before the court that exhibits P-4, P-8, P-9, P-10, P-13, P-14, P-15, P-17, P-18, P-19, P-21, P-22 and P-34 in all representing Rs. 1,10,408.66 are shown as having been encashed on dates earlier than the dates on which they were actually encashed in the books of account written by the second defendant. The particulars of those cheques are as follows :

Exhibit

Date of encashment

Entry in the rough day book

4

26-12-60

24-12-60

(see Ex. P. 156)

8

29- 8-59

27- 8-59

(do. 170)

9

15-10-59

14-10-59

(do.)

10

27-10-59

23-10-59

(do.)

13

29- 1-60

28- 1-60

(do. 177)

14

22- 3-60

21- 3-60

(do. 180)

15

24- 4-60

16- 4-60

(do. 182)

17

9- 6-60

8- 6-60

(do).

18

27- 6-60

24- 6-60

(do.)

19

27- 6-60

16- 7-60

(do.)

21

29- 8-60

25- 8-60

(do. 184)

22

16- 1-61

12- 1-61

(do. 161)

34

29-4-59

24- 8-58

(do. 194)

10. In the case of the following cheques, the entries are made in the books of the plaintiff on dates subsequent to the dates of the encashment:

5

28- 4-59

29- 9-59

(see Ex. P. 166)

6

26- 5-59

29- 9-59

(do.)

24

20- 5-57

21- 5-57

(do. 187)

25

13- 6-57

14- 6-57

(do. 187)

26

9- 7-57

22- 7-57

(do.)

28

21- 8-57

2- 9-57

(do. 189)

30

12-11-57

13-11-57

(do.)

31

15- 1-58

27- 1-58

(do. 191)

32

25- 2-58

1- 3-58

(do.)

36

26- 5-58

31- 5-58

(do. 194)

37

3- 6-58

9- 6-58

(do.)

38

16- 6-58

28- 7-58

(do.)

40

25-10-58

30-10-58

(do. 196)

42

19-12-58

28- 3-59

(do. 198)

11. With regard to exhibit P-3, we do not find any corresponding entry in the books of accounts of the plaintiff. It has been stated by P.W. 8 in the course of his evidence that all these entries have been made by the second defendant himself. The second defendant, who was alive during the trial of the suit, did not choose to enter the witness box. The first defendant also did not make any attempt to summon the second defendant to give evidence in support of its case. P.W. 8 has further sworn that the cheque books from out of which the cheques, exhibits P-2 to P-43, were taken out were always in the custody of the second defendant, who was working as the chief accounts officer of the plaintiff during the relevant period. It is seen from the books produced by the plaintiff that entries have been made by the second defendant that the amounts covered by exhibits P-11, P-12, P-13, P-14, P-19, P-20, P-4 and P-22 had been paid to Canara Workshop on behalf of the plaintiff. The evidence of P.W. 7, Mukunda Shenoy, who is the manager of Canara Workshop, is that no such payments had

been made by the plaintiff to the Canara Workshop. The day books and ledger of the years 1959-60 and 1960-61 maintained by the Canara Workshop, which are marked as exhibits P-149 to P-156, do not also show any corresponding entries. There is no reason to disbelieve the evidence of P.W. 7 and the entries in exhibits P-149 to P-156. It follows that the entries made by the second defendant in the plaintiff's account books that the said sums had been paid to the Canara Workshop are false entries. Similarly, it is seen from the accounts of the plaintiff produced before the court that the amounts covered by exhibits P-29, P-10, P-39, P-41 and portion of the amount covered by exhibit P-43 are shown as having been paid to the sales tax department towards the sales tax due of the plaintiff. The evidence of P.Ws. 5, 10, 14, 11, 12 and 15, who are the officers of the sales tax department, shows that the said payments have not been received by the department. It is further seen that portions of amounts covered by exhibits P-2, P-21 and P-43 are shown as having been paid to the Syndicate Bank. It is no doubt true that nobody on behalf of the Syndicate Bank has come and given evidence stating that those amounts were not received, but P.W. 8 has stated on going through the accounts that such payments had not been made. With regard to the amounts covered by exhibit P-3 and portions of amounts covered by exhibits P-2 and P-21, there are no entries in the books of account of the plaintiff even though it was the duty of the second defendant to maintain the accounts.

12. All the cheques, exhibits P-2 to P-43, are drawn in favour of the second defendant, Y. Venkatesha Bhat. On the reverse of those cheques we find the signatures of Y. Venkatesha Bhat acknowledging the receipt of payment from the first defendant-bank. It is also significant that the first defendant has not examined any officer of the bank who was connected with the encashment of the said cheques or who was responsible for verifying the signature of the drawer before sanctioning payment against the cheques in question. In the circumstances of this case, we hold that it has been positively established in this case that the signatures purporting to be those of V. S. Kudva in exhibits P-2 to P-43 are not genuine signatures and the payments made by the first defendant are payments made against forged cheques.

13. For the reasons mentioned above, we also hold that it is not proved that the plaintiff had the benefit of the sums covered by the said forged cheques.

14. The next question is whether the defendants are liable to pay the amount covered by exhibits P-2 to P-43 which are held to be forged cheques. In so far as the second defendant is concerned, it has to be observed that the liability is incontestable. We have held that he has drawn the amounts covered by exhibits P-2 to P-43 on forged cheques and there is no evidence to show that any part of the said amounts has been utilized for the purpose of the plaintiff. The second defendant has not given evidence in the case. Except filing his written statement, he does not appear to have taken any part in the conduct of the trial. In the circumstances, the decree passed against the second defendant cannot be

annulled.

15. We shall now proceed to examine the liability of the first defendant. The relationship between the customer of a bank and the bank as held by the Supreme Court in *Shanti Prasad Jain Vs. The Director of Enforcement*, is that of a creditor and debtor. When the signature on a cheque is forged, then it has to be held that the bank had no authority to make payment against the said cheque and that the bank would be liable to credit the account with the said sum or to pay the said sum on demand unless the bank is able to show that the customer cannot recover either on account of adoption, estoppel or ratification. The above principle has been explained by the Supreme Court in *Bihta Co-operative Development Cane Marketing Union Ltd., and Another Vs. The Bank of Bihar and Others*, in the following terms :

" If the signatures on the cheque or at least that of one of the joint signatories to the cheque are not or is not genuine, there is no mandate on the bank to pay and the question of any negligence on the part of the customer, such as, leaving the cheque book carelessly so that a third party could easily get hold of it would afford no defence to the bank. According to Halsbury's Laws of England, 3rd edition, volume 2, article 380 :

" A document in cheque form to which the customer's name as drawer is forged or placed thereon without authority is not a cheque, but a mere nullity. Unless the banker can establish adoption or estoppel, he cannot debit the customer with any payment made on such document".

16. While making the above observation, the Supreme Court relied on a decision of the House of Lords in *London Joint Stock Bank Ltd. v. Macmillan* [1918] A.C. 777 (H.L.) to which we shall advert later. From the observations of the Supreme Court, it is clear that when once it is established that payments have been made against forged cheques unless the banker shows that his case comes under any one of the circumstances recognised by law by which he can avoid the liability, a decree should follow in a suit instituted by the customer for the amount paid under the forged cheque.

17. We shall now proceed to consider points Nos. 3 and 4 raised by Sri Sundaraswamy. Elaborating his contention Sri Sundaraswamy argued that, in the instant case, the 42 cheques in question were presented on various dates between the year 1957 and the year 1961. During that period the first defendant used to send to the plaintiff pass sheets containing the debit and credit entries in the current account of the plaintiff with the first defendant every month and that at the end of every half year ending 30th June and 31st December of every calendar year, a letter used to be sent in the form in exhibits D-21, D-54, D-55 and D-56 appear. In the letters sent at the end of the half year, the plaintiff was asked to confirm that the balance in its account with the first defendant was as mentioned in the said letter. The plaintiff never questioned until March, 1961, the correctness of the entries in the said pass sheets and half yearly statements. It

was also argued that the accounts of the company were being audited as required by the Companies Act by chartered accountants and if really the case of the plaintiff that the second defendant has misappropriated large sums of money to the tune of nearly three lakhs of rupees was true, the plaintiff would not have kept quiet. The several entries in the books of account maintained by the plaintiff itself showed that all the amounts covered by the cheques in dispute except exhibit P-3 had been credited in the books. It had been further admitted by V. S. Kudva himself in paragraph 5 of his deposition before the criminal court which has been marked as exhibit P-228 that " every month the bank used to send us a statement asking the company to acknowledge that the amount stated is correct. I did not at any time intimate about the incorrectness as I did not find incorrectness. I have filed a suit against the Canara Bank for three lakhs and odd saying that the debit to the company is wrong, and in exhibit P-227, another deposition, it had been admitted by him that he was scrutinising the pass sheet sent by the bank and that every month trial balance-sheet was being prepared for being placed before the board of directors by 10th or 14th of next month." It was contended that in view of the circumstances narrated above that either V. S. Kudva knew that the forged cheques were encashed by the second defendant and deliberately withheld the above information from the knowledge of the first defendant or that he was negligent in not informing himself about the true state of affairs of the plaintiff even though he had every opportunity to know it. In either event it is urged that V. S. Kudva was in law bound to inform the first defendant about the encashment of forged cheques by the second defendant and he having not done so, the plaintiff was not entitled to recover the amounts covered by the forged cheques.

18. In support of the above contention, certain passages from Halsbury's Laws of England were relied upon :

" Entries in the pass-book to the credit of the customer are, when the book is delivered to him, prima facie evidence against the banker ; when the book is returned by the customer without objection, entries to his debit are prima facie evidence against him." (Paragraph 388 at page 209, volume 2, 3rd edition).

19. It is seen that at paragraph 389 of the same volume, a slightly different note is struck as follows :

" Assuming the return of the pass-book without comment to constitute a stated and settled account, it appears doubtful whether the customer is estopped from subsequently disputing debits shown therein to the prejudice of the bank, that is, from reopening the account on proof of error. The question usually arises with reference to cheques to which the customer's signature has been forged, or the amount of which has been fraudulently raised. The estoppel depends mainly on whether there is or is not a duty on the part of the customer to examine the pass-book and paid cheques, if returned with it, and to communicate to the banker within reasonable time all debits which he does not admit, on which point the authorities are conflicting."

20. Before anybody can be estopped by a representation inferred from negligent conduct, it must be shown that there is a duty to use due care towards the party misled or towards the general public of which he is one. The negligence on which it is based should not be indirectly or remotely connected but must be proximate or really the cause of that result. In order to sustain a plea of estoppel, it must be shown that the transaction itself was the direct result of the negligence. The above view is affirmed by the Supreme Court in *The New Marine Coal Co. (Bengal) Private Ltd. Vs. Union of India (UOI)*, .

21. The question, therefore, is whether the customer owes a duty to the bank to inform the bank about the incorrectness or mis statement in the entries in the pass-book and if he neglects to do so within a reasonable time, whether he would be non-suited in a suit for recovery of the amount paid on a forged cheque.

22. In support of their respective cases, Sri Sundaraswamy and Sri Krishnamurthy, learned counsel for the parties, referred to several passages from the *Law of Banking* by Paget. As those passages are mainly dependent upon certain decisions of the English courts, we find it unnecessary to refer to them as we are dealing with those decisions in detail hereafter.

23. We propose to refer to the state of the law as it obtains in America before dealing with the law prevailing in England. In Articles 604-10, *American Jurisprudence* 2d, 2nd edition, the following passage is found :

"Circumstances, and acts or conduct of depositor, relieving bank of liability. -- Where the depositor is negligent or acts in such a manner that the drawee bank is misled or induced to pay a cheque upon which the depositor's signature has been forged, the bank may, as a general thing, escape liability for repayment of amount thus paid by it on such cheque. Thus, payment by a bank of a forged cheque may be justified or excused on principles of estoppel or on the basis of negligence or misleading conduct by the depositor which directly caused the bank to pay the instrument. Failure on the part of the depositor to examine his pass-book, statements of account, and cancelled cheques, and to give notice within a reasonable time or as required by statute of any forgeries, alterations or discrepancies which he may, in the exercise of due care and diligence, discover may relieve the bank from liability. If the depositor recovers from the forger he cannot also recover from the bank.

The mere fact, however, that the forgery was committed by a confidential employee or agent of the depositor, who, by his position, had unusual facilities for perpetrating the fraud and imposing the forged paper upon the bank, does not enable the bank to shift the loss to the depositor, in the absence of some circumstance raising an estoppel against the depositor."

24. In *Leather Manufacturers' National Bank v. Edmond Charles Morgan*, 117 U.S. 96 the Supreme Court of America held that:

" When a bank depositor sends his pass-book to the bank to be written up, it is

his duty upon its return, either in person or by duly authorised agent, to examine the account and vouchers returned within a reasonable time and give to the bank timely notice of any objections thereto ; if he fails to do, he may be estopped from questioning the conclusiveness of the account."

25. It appears that in America a practice or custom on the lines suggested in the passage extracted from the American Jurisprudence and in the decision of the Supreme Court of America referred to above has developed and it has ultimately taken the form of the uniform commercial code. Section 4-406 of the Uniform Commercial Code states:

"(1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statements and items to discover his unauthorised signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by Sub-` (1) the customer is, precluded from asserting against the bank-

(a) his unauthorised signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; . . . "

26. The above passage appears at page 124 in the Law of Banking, 8th edition. A duty arises either out of a law or custom having the force of law or under an agreement between the parties. It is seen that the Uniform Commercial Code in force in America is not in force in all the States. It is stated that in the State of Louisiana the said Code has not yet been adopted. The law prevailing in America is governed by the conditions prevailing in that country. We do not, however, consider it desirable to apply the principles followed by the American courts while deciding cases arising in India. It is well-known that Indian courts have been applying the principles of English common law with such modification as may be necessary to suit the prevailing conditions in India to cases which come up for decision before them.

27. Dealing with the decision of the Supreme Court of America referred to above, Justice Bray observed in *Kepitigalla Rubber Estates Ltd. v. National Bank of India Ltd.* [1909] 2 K.B. 1010 as follows :

" I was referred to an American case, *Leather Manufacturers' Bank v. Morgan*. I do not think it necessary to say more about that case than that the facts as stated in paragraph 5 on page 100 are quite sufficient to distinguish it from the present case, and that it has never been acknowledged by any court or judge in this country as correctly stating our law."

28. G. K. Mitter J. distinguished the said American case in *Tarini Charan Nandi v.*

Ajit Kumar Kundu ILR [1955] 2 Cal. 365 as follows:

" Mr. Sen relied on the American case mentioned above as also on certain observations made in several judgments which are summarised in Paget's Law of Banking, 5th edition, at pages 344 to 362. The relevant facts in the Leather Manufacturers" case, 117 U.S. 96 were that the bank was in the habit of sending up the pass-book from time to time to its customers along with vouchers in the shape of cheques drawn by the customer so that the customer had an opportunity of comparing in the pass-book. On these facts it was held in the Leather Manufacturers" case : "It does not seem to be unreasonable in view of the course of business and the custom of banks to surrender their vouchers on the periodical writing up of the accounts of depositors, to exact from the latter some attention to the account when it is made up, or to hold that the negligent omission of all examination may, when injury has resulted to the bank, which it would not have suffered if such examination had been made and the bank had received notice of objections, preclude the depositor from afterwards questioning its correctness ". "

29. It was further observed at page 820 :

" If the plaintiffs knew of the mistake or if they had that notice of it which consists in the knowledge of facts which, by the exercise of due care and diligence, will disclose it, they failed in their duty ; and adoption of the cheque and ratification of the payment will be implied. They cannot now require the defendant to correct a mistake to its injury, from which it might have protected itself but for the negligence of the plaintiffs.....

No custom or practice of the kind mentioned in the American judgment in the Leather Manufacturers" case 117 U.S. 96 has been pleaded or proved in this case. Even in England it seems that the courts have not gone to the length of holding that there is a duty cast on the customer to examine his pass-book whenever it is sent to him and to inform the bank of the irregularities therein. In the absence of such duty clearly, in my opinion, there can be no question of estoppel."

30. We shall now proceed to consider the position of law governing the customer and the banker and the entries in pass-books or pass sheets as it obtains in England.

31. The earliest English case cited before us is Devaynes v. Noble [1816] 1 Mer. 529 : 35 E.R. 767. In that case, we find a reference to the practice that prevailed in England during that period among the bankers. The report prepared by the Master stated :

" A book, called a passage-book, is opened by the bankers, and delivered by them to the customer, in which, at the head of the first folio, and there only, the bankers, by the name of their firm, are described as the debtors, and the customer as the creditor, in the account, and, on the debtor side, are entered all

sums paid to or received by the bankers on account of the customer ; and, on the creditor side, all sums paid by them to him, or on his account; and, the said entries being summed up at the bottom of each page, the amount of each, or the balance between them, is carried over to the next folio, without further mention of the names of the parties, until, from the passage-book being full, it becomes necessary to open and deliver out to the customers a new book of the same kind....."

32. The said case does not, however, lay down unequivocally that there was a duty on the part of the customer to intimate the banker about any error that may be appearing in the passage-book (or pass-book) and that he would be disentitled to claim any amount paid on a forged cheque or order in the event of his committing default in performing the said duty.

33. The next case cited before us is *McKenzie v. British Linen Company* [1881] 6 App.Cas. 82, 101 (H.L.) In that case it was held that a person who knew that a bank was relying upon his forged signature to a bill could not lie by and not divulge the fact until he saw that the position of the bank was altered for the worse ; but there was no principle on which his mere silence for a fortnight from the time when he first knew of the forgery during which the position of the bank was in no way altered or prejudiced, could be held to be an admission or adoption of liability, or an estoppel. Lord Blackburn, in the course of his speech, observed :

" I cannot think that even if M^rKenzie had gone so far in his endeavours to shield Fraser from the consequences of his criminal act as to make himself liable to criminal proceedings for an endeavour to obstruct justice, that would bar him from averring against the bank that the signature was not his. Certainly, I think that his not telling the bank on the 15th of July nor till the 29th of July that it was a forgery, and so letting them continue in the belief that it was genuine, if he had not induced it, could not so preclude him if, as I think was clearly the fact here, the bank neither gave fresh credit in the interval nor lost any remedy which if the information had been given earlier they might have made available."

34. In the instant case there is no evidence to show that either V. S. Kudva or anybody else employed by the plaintiff other than defendant No. 2 knew that certain cheques which had been forged were being encashed until March, 1971, when P.W. 8 discovered certain discrepancies in the accounts of the plaintiff that had been maintained by defendant No. 2. After that date the first defendant had not paid any amount against any forged cheque presented by the second defendant. In the circumstances, even though some of the observations made by their Lordships in the above decision might appear to be in favour of the first defendant, they would not be of any avail to the first defendant.

35. In *Spencer v. Wakefield* [1887] 4 ITR 194 no question of payment by a bank of forged cheque arose for consideration. The question that arose for consideration was that when debit entries made in the pass-book with regard to

the usual charges of interest and commission that were debited by a bank and when such entries had been acknowledged as correct by the customer for nearly ten years the account could be reopened and whether the plaintiff could ask the accounts to be rectified by crediting his account with the amounts so debited. The court was of the opinion that the plaintiff's case was liable to be negated on the ground of acquiescence as it was of the opinion that the plaintiff had with full knowledge been acknowledging the correctness of the accounts for ten years. The above case can be distinguished from the present case on the ground that, in order to sustain a plea of acquiescence, it is necessary to prove that the party against whom the said plea is raised had remained silent about the matter in regard to which the plea of acquiescence is raised, even after knowing the truth of the matter and no such proof is forthcoming in this case.

36. Considerable reliance was placed by the first defendant on the decision in *Bank of England v. Vagliano Bros* [1891] A.C. 107 (H.L.). in which the following were the facts : The plaintiffs were businessmen having number of correspondents throughout the world who were in the habit of drawing bills on them from time to time, sometimes consigning goods against the bills and sometimes making direct remittances in money. Some of the correspondents were accustomed to draw the bills and send their advices to the plaintiffs in Greek language. One Glyka who was an employee of the plaintiffs generally opened the correspondence received by the plaintiffs and assisted the plaintiffs in understanding the contents of the bills and advices. Taking advantage of his position Glyka appears to have placed from time to time certain fictitious bills said to have been drawn by one George Vucina, a merchant and banker in Odessa, whose credit with the plaintiffs was unlimited and" who used to send in each year numerous bills amounting to many thousands of pounds, for the acceptance of Vagliano who was empowered to accept the said bills on behalf of the plaintiffs. The said bills showed that a firm by name C. Petridi & Co. carrying on business at Constantinople as the payees. Glyka also presented forged letters of advice purporting to having been sent by George Vucina along with the said bills. Vagliano in the ordinary course accepted the bills by putting his signature on all of them. It ultimately turned out that the amounts covered by 43 bills of that type had been presented by Glyka or some other person on his behalf before the Bank of England with whom the plaintiffs had an account and drawn the amounts. This he was able to do by forging the endorsement of the payee, C. Petridi & Co., also on the bills. When the plaintiffs came to know that they had been defrauded to the extent of ₹71,500 by means of the forged bills, instituted an action for recovery of the same against the Bank of England on the ground that payments made against forged bills could not be debited to the account of the plaintiffs. The trial court and the Court of Appeal made a decree in favour of the plaintiffs. On appeal by the Bank of England, the defendant in the case, the House of Lords was of the opinion that where by his conduct the customer of a bank however innocently misled the bank into the belief that a bill of exchange which he had accepted and passed to the bank for payment to the payee named

thereon was a genuine one and the bank relying in good faith on that representation paid the bill, the customer could not on discovering that the bill was a forged one recover from the bank the amount so paid. The decision in the above case mainly rested on the fact that Vagliano had accepted the bills by putting his signatures on them even though they were forged ones and the plaintiffs had advised their bankers that the forged bills were due for payment believing them to be genuine and on presentation the bank paid the amounts of the bills. The House of Lords was of the opinion that on the facts of that case the conduct of the plaintiffs had led the bank to believe that the bills were genuine, and, therefore, the bank was not liable to the plaintiffs for the sums paid upon the forged bills. In the instant case, we do not have any evidence of that nature, and, therefore, the said case is clearly distinguishable from the present one.

37. The next case cited before us, namely, *Chatterton v. London and County Bank*, unreported is not reported in any of the law reports. A reference to it is, however, found in some of the subsequent decisions and at page 119 in Paget's *Law of Banking*. The facts of the case as can be gathered from the said book are these : The plaintiff was a customer of the defendant-bank. Between September, 1887, and August, 1888, some cheques were presented to the defendant purporting to have been signed by the plaintiff and they were honoured. The plaintiff presented his pass-book every week for being filled up and took it back from the bank after it was so filled up. In or about August, 1888, the plaintiff discovered that twenty-five of the cheques which were forged had been honoured by the bank. He, therefore, called upon the bank to pay the amount covered by the said cheques. The trial court found that the cheques were not forged and the plaintiff's conduct contributed to the loss. The divisional court set aside the judgment of the trial court and ordered a fresh trial. Lord Esher, who was a member of the divisional court, in the course of the said proceedings, appears to have observed that there was no law which required a customer to look through the pass-book and to make a report to the bank about any incorrect statements. At the new trial Mathew J., in summing up to the jury, stated that there was no contract between the bank and the customer with regard to the pass-book. The jury ultimately found in favour of the plaintiff.

38. The next case relied upon by the first defendant is *Scholfield v. Lord Londesborough* [1896] A.C. 514 (H.L.). In that case a bill of exchange has been drawn for ? 500 upon a stamp sufficient to cover a much larger sum than that which appears on the face of it and spaces were intentionally left in the body, of the bill which would facilitate alterations. After the respondent had accepted the bill, the bill was altered by altering ? 500 to ? 3,500. After such alteration the bill came into the hands of the plaintiff as a bona fide endorsee for value. In an action on the bill by the plaintiff against the defendant for a sum of ? 3,500 the court held that the defendant was not liable for more than ? 500, the original amount of the bill. We do not think that the above case is relevant for the purpose of deciding the case on hand.

39. The next case to be considered is *Lewes Sanitary Steam Laundry Company Ltd. v. Barclay and Co, Ltd.* [1906] 95 GLT 444. That was again a case in which monies had been paid by the defendant-bank on forged cheques. There Kennedy J. observed as follows:

" Upon these facts, unless the defendants can make good their defence of estoppel, the plaintiffs are clearly entitled to succeed. The estoppel which is alleged is an estoppel created by the negligence of the plaintiffs. Negligence, to constitute an estoppel, implies the existence of some duty which the party against whom the estoppel is alleged owes to the other party. I think that the relation of bankers and customers does involve a duty on the part of the customer. It is not (as I understand) disputed that there might, as between banker and customer, be circumstances which would be an answer to the prima facie case that the authority was only to pay to the order of the person named as payee upon the bill, and that the banker can only charge the customer with payments made pursuant to that authority. Negligence on the customer's part might be one of those circumstances : the fact that there was no such payee might be another ; and I think that a representation made directly to the banker by the customer upon a material point, untrue in fact (though believed by the person who made it to be true), and on which the banker acted by paying money which he would not otherwise have paid, ought also to be an answer to that prima facie case....

40. In that case it was held that the duty involved was that the customer should not by his conduct facilitate payment of money on forged cheque. Ultimately, the court found that the suit was liable to be decreed as the facts did not justify the plea of negligence. In deciding the above case Kennedy J. relied upon the decision of the House of Lords in *Bank of England v. Vagliano Brothers* [1891] A.C. 107 (H.L.) : [1891] A.C. 107 (H.L.) already referred to above.

41. We feel that the law governing the binding nature of the entries in a pass-book on a customer of the bank has been correctly explained in the case of *Kepitigalla Rubber Estates Ltd.* [1909] 2 K.B. 1010 (K.B.) already referred to above. After distinguishing the decision in *Bank of England v. Vagliano Bros.* and some other cases cited before him, Justice Bray observed that although it was the duty of a customer of a bank in issuing mandates to the bank to take reasonable care so as not to mislead the bank, there was no duty on the part of the customer to take precautions in the general course of carrying on his business to prevent forgeries on the part of his servants. It was further held by him that the mere fact that a customer of a bank took his pass-book out of the bank and returned it without objecting to any of the entries contained therein, did not amount to a settlement of accounts as between him and the bank in respect of those entries. In that case the secretary of a company had forged the signature of two of the directors of the company to a number of cheques which purported to have been drawn by the directors on behalf of the company upon the defendants who were the company's bankers and the defendants had paid

the cheques so drawn over a period of about two months. In an action by the company against the bank to recover the amounts so paid, it was held that the company was entitled to recover.

42. Following the decision in *Kepitigalla Rubber Estate's case* [1909] 2 K.B. 1010 (K.B.) Channel J. observed in *Walker v. Manchester and Liverpool District Banking Company Ltd.* [1913] 108 GLT 728 that the authorities were against the contention that there was a duty on the part of the customer to examine his pass-book and to report to the bank that payment had been made on a forged cheque and that neglect of such duty would deprive him of the right to recover the sums paid on certain other forged cheques subsequently.

43. Next, we shall turn to the decision in *London Joint Stock Bank Ltd. v. Macmillan* [1918] A.C. 777 (H.L.) which has been referred to by the Supreme Court in *Bihta Co-operative Development Cane Marketing Union Ltd., and Another Vs. The Bank of Bihar and Others*, The facts of the said case were these: A partner in a firm which was the customer of a bank signed a bearer cheque in which the column in which the money had to be specified in words had been left blank, but in the column in which the money had to be specified in figures, the figure " 2 " had been written after the sign " ? " printed on the cheque. After the cheque was signed by the partner, the clerk of the firm inserted the words " one hundred and twenty pounds " in the space provided for the amount of the cheque in words and placed a " 1 " and a " 0 " on either side of " 2." He then took the cheque to the bank and encashed, receiving ? 120 which the bank debited to the firm's account. In an action instituted by the firm for the recovery of ? 120 from the bank on the ground that the bank had no authority to honour a forged cheque, Lord Finlay L.C., who spoke for the House of Lords, observed as follows:

" 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."

44. The said opinion was expressed by the Lord Chancellor following the majority view expressed in *Young v. Grote* [1827] 4 Bing. 253 : 130 E.R. 764, in which it was stated that if a customer in drawing a cheque neglected reasonable precautions against forgery and forgery ensued, he was liable to make good the loss to the banker and that the fact that a crime had to intervene to cause the loss did not make it too remote. In that view of the matter, the plaintiff was non-suited. It is seen that the decision in the above case was based on the ground

that the plaintiff himself had facilitated commission of forgery by signing a cheque having blank spaces which could be conveniently filled up later on without leaving any room for suspicion. In the case before us the only thing established is that the cheque book had been left in the custody of the second defendant who was the chief accounts officer of the plaintiff. No other kind of negligence on the part of V. S. Kudva has been established which could be considered as the immediate cause for the forgery of the cheques in question.

45. It is no doubt true that at first sight the decision in *Greenwood v. Martins Bank Ltd.* [1933] A.C. 51 : [1932] All E.R. 318 (H.L.) appears to be in support of the case of the first defendant. But a closer reading of the said decision would show that the facts of the case are clearly distinguishable from the facts of the present case. The facts of that case were these : The plaintiff had a banking account with the defendants. From that account the wife of the plaintiff had withdrawn a sum of ? 410.65 under 44 cheques in which she had forged the signatures of the plaintiff. The court found that the cheques were forged and that they had been honoured through the carelessness of the bank officials. When the plaintiff wanted to draw some amount out of the account, and asked his wife for the cheque book then she told him that there was no money in the bank as it had all been drawn out by her to assist her sister to fight a case in respect of a house and she asked the plaintiff not to go to the bank until the case was finished. The plaintiff consented in the expectation that he might receive the amount drawn on the forged cheques at the conclusion of the trial of the said suit. When the plaintiff was not able to realise the amount as expected, he instituted a suit for recovery of the amount which had been paid out on the forged cheques. The bank, while admitting that the cheques were forged ones, pleaded that the plaintiff was disentitled to succeed because : (1) he had ratified the act of his wife in putting his name to the cheques ; (2) had adopted that act; and (3) was estopped by his negligence from alleging that the signatures were not his. It may be mentioned here that by the time the suit was instituted the plaintiff's wife had died and that the bank could not proceed against her in tort. The action was tried by the Commissioner at Assizes. The Commissioner held that the plaintiff was entitled to succeed taking the view that the bank's negligence was the proximate cause of the loss and, that, therefore, it could not set up an estoppel against the plaintiff. In the appeal before the Court of Appeal, Scrutton L.J. held that there was a duty on the plaintiff to disclose the forgeries and that in the circumstance the failure to disclose gave rise to an estoppel as such failure to disclose deprived the banker of the opportunity to proceed against the forger. When the matter came up before the House of Lords, Lord Tomlin observed that no question of ratification or adoption on the part of the plaintiff was involved in this case but the plaintiff had to fail only on the ground of estoppel. It was disclosed in the course of the evidence of that case that the plaintiff had known about the forgeries for a sufficiently long time and that he had told the bank's officials that he did not wish to raise any dispute earlier " as he did not want to give his wife away". The plaintiff's silence, therefore, was

found to be deliberate and intended to produce the effect which it had in fact produced, namely, the leaving of the defendant in ignorance of the true facts so that no action might be taken by them against the plaintiff's wife and the money might not be recovered from the plaintiff himself on the basis that he was liable for torts committed by his wife during coverture unless the tort was directly connected with a contract with her. In the case before us, neither is it established that V. S. Kudva or any other person in charge of the affairs of the management of the plaintiff knew about the encashment of the forged cheques till March, 1961, nor is it established that the plaintiff itself would have been liable jointly or severally in the event of a decree being made against the second defendant for a tort. We, therefore, hold that no reliance can be placed by the first defendant on the above case.

46. It is no doubt true that in AIR 1934 147 (Privy Council) Lord Wright appears to have observed that the retention by a customer without comment of a bank statement showing debits and credits may amount to a stated and settled account. But the above decision was not followed by Justice McNair in *Brewer v. Westminster Bank Ltd.* [1952] 2 All E.R. 650 (Q.B.) on the ground that the said decision was not in conformity with the views expressed by English courts, till then, but, on the other hand, was in direct conflict with the observations of Justice Bray in *Kepitigalla's case* [1909] 2 K.B. 1010 (K.B.). We are in respectful agreement with the view expressed by Justice McNair.

47. Summing up the law relating to estoppel against a customer of a bank the learned authors, Spencer, Bower and Turner, have observed in *The Law Relating to Estoppel by Representation*, 1966 edition, at page 199, as follows:

" Customer not estopped by pass-book.--On the other hand, the conduct or inaction of the customer in returning to the banker, without correction or comment, a pass-book in which he is erroneously debited, though prima facie evidence against himself, certainly does not, of itself and without more, amount to a representation or acknowledgment of the accuracy of the entry, because the customer owes no duty to the banker to examine the entries at all, or to look for errors therein and cannot, therefore, be estopped from proving their inaccuracy, and from disputing his liability in respect thereof, merely because he omitted to take a step which, in his own interests, would have been prudent and business-like, or because his examination of the pass-book was so perfunctory and careless that he failed to notice any error therein.

It will be otherwise, of course, if the customer does in fact examine his pass-book, and there is thereby actually brought to his notice the fact that some person is operating without authority on his account. If he is silent with this knowledge, an estoppel, at least as regards subsequent losses, may arise against him ; but this is not an estoppel arising from any duty to examine the pass-book; nor is it an estoppel at all peculiar to to banker and customer. It is a perfectly ordinary example of the estoppel which arises from failure to discharge a duty to speak in circumstances in which such a duty has arisen. "

48. When a defendant relies upon the doctrine of estoppel he should establish that there was either misrepresentation on the part of the plaintiff or neglect of duty to inform the defendant about the true state of affairs and that as a consequence of the misrepresentation or omission to speak at the appropriate time the plaintiff had altered his position to his prejudice. In connection with the applicability of the rule of estoppel against a customer of a bank, Caspersz in his Tagore Law Lectures, delivered in 1893, entitled " Estoppels and the Substantive Law " has observed in paragraph 44, at page 59, as follows :

" The silence of a man whose name is forged as maker of a promissory note would, it is conceived, work an estoppel against him if, with notice of the note he remains silent, and the bank which discounts the note is, by his silence, prevented from recovering the proceeds. But if he did actually inform the bank, though not at once, and if the bank was in no worse position by reason of his silence it would be unreasonable to hold him liable on the bill. "

49. In considering the fact of silence or omission to speak, it has to be seen whether there was any occasion for words and any reasonable explanation for the silence. In the instant case, the explanation of the plaintiff is that it was not known till March, 1961, until after the last of the cheques was encashed that the second defendant was withdrawing monies on the forged cheques. There being no evidence to contradict the above statement, we feel that the plaintiff has not neglected to perform its duty which it owed to the first defendant. It was, however, argued by Sri Sundaraswamy that if the plaintiff had not been careless but diligent in regard to its own affairs, it would have been reasonably possible for the plaintiff to know that there had been unauthorised withdrawals from its account, and, therefore, it must be held that the plaintiff had constructive notice of the forgeries in question. When we are dealing with a case of estoppel arising out of omission to speak on the part of the customer of a bank, in the circumstances established in this case, it would not be just to hold that the customer is estopped merely on the basis that the customer could have known about the existence of the forgeries if he had been diligent.

50. After a review of the decisions of the English courts cited before him, G. K. Mitter J. held in *Tarini Charan Nandi v. Ajit Kumar Kundu* ILR [1965] 2 Cal. 365 that no implied contract as to settlement of account arose between a customer and his banker merely by reason of the banker sending the pass-book to the customer with the accounts written up and the to point out any irregularities therein and in the absence of special circumstances by which the attention of the customer was drawn by the banker to the accounts and the customer called upon to look into them, the customer was under no duty to examine the pass-book and report any inaccuracies therein.

51. In view of the foregoing, we hold that the suit is not liable to be dismissed either on account of negligence on the part of the plaintiff or on the ground of adoption or acquiescence. We also hold that the circumstances established in the case do not amount to an estoppel disentitling the plaintiff from laying claim to

the amounts paid on the forged cheques.

52. The next contention urged on behalf of the first defendant that the entries in the pass-sheets sent by the first defendant to the plaintiff every month and the half yearly statement of accounts sent similarly, none of which has been shown to have been acknowledged by the plaintiff as correct, amounted to accounts stated or settled between the parties from time to time cannot also be accepted for the reasons already mentioned above.

53. It was lastly contended that the suit was barred by limitation. The suit is one by a customer against a bank in respect of the amounts that had been credited to the plaintiff's account with the bank. The case, therefore, falls under Article 60 of the Limitation Act, 1908, which is applicable to this case. In that event the time begins to run from the date of demand and the plaintiff is allowed a period of three years to institute a suit from the date of demand. In the instant case, it is not disputed that the suit is filed within three years from the date of such demand which was made after March, 1961. It was, however, contended that Article 60 would not apply where there was a dispute regarding the liability of the bank to pay the amounts arising out of payments made on forged cheques. We do not find that a different view is possible even in such a case. In effect, the prayer of the plaintiff in a case of this type is that the bank should rectify the account of the customer by crediting his account with the amounts paid on forged cheques and to allow the plaintiff to operate on the same. Even if the view we have taken about Article 60 as stated above is erroneous for any reason, the suit would still be in time because there being no other specific article applicable to the case, Article 120 which provides for a period of limitation of six years from the date of the accrual of the cause of action would be attracted. The earliest of the cheques encashed by the second defendant unauthorisedly involved in the suit is dated April 22, 1957. The suit filed on August 20, 1962, therefore, would be well within time.

54. No other point survives for consideration.

55. In so far as the question of costs is concerned, we feel that this is a fit case in which we should exonerate the first defendant from the liability to pay costs in this as well as in the court below. We order accordingly.

56. With the above modification regarding the costs only, the decree of the court below is affirmed. The appeal is accordingly disposed of.