child relationship. While the New York statute provides that the *parent* is "released from all parental duties toward or responsibility for" the child, the Illinois statute releases only the *child*'s obligation, depriving the parent only of his rights. Cahill's N.Y. Cons. L. 1930, c. 14, § 114; Smith-Hurd's Ill. Rev. Stats. 1935, c. 4, § 8. It is astonishing that the two courts arrived at opposite decisions, each seemingly contradictory to the statute involved, because of contrary policy determinations. That both legislatures intended some relationship to remain is clear from the express statutory reservation of the right of the adopted child to inherit from his natural parents. Cahill's N.Y. Cons. L. 1930, c. 14, § 114; Smith-Hurd's Ill. Rev. Stats. 1935, c. 4, § 5. Except in questions of inheritance the natural parent-adopted child relationship has had little discussion. However, see *In re Gertrude Masterson*, 45 Wash. 48, 87 Pac. 1047 (1906) (natural parents' preferred claim to guardianship); *In re MacRae*, 189 N.Y. 142, 81 N.E. 956 (1907) (consent of natural parents to second adoption); *In re Puterbaugh's Estate*, 261 Pa. 235, 104 Atl. 601 (1918) (failure of adopted child to qualify as "child" under a will). Under civil law codes, the source of American adoption statutes, it is clear that contingent parental responsibility remains after adoption. Loewy, Germ. Civ. Code § 1764 (1909); French Civ. Code, art. 352 (Cachard's 2d ed. 1930); Aust. Gen. Civ. Code § 183 (Altman, Jacob and Weiser's ed. 1931); Ital. Civ. Code, art. 211 (Franchi, 1931) (new draft 1931, § 348) (adopting parents' responsibility "primary," natural parents', "secondary"). The English and Scotch acts and many American statutes, including the New York act, but not the Illinois act, however, apparently relieve the natural parents of all duties, including the duty to support. 16 & 17 Geo. V, c. 29 (1926); 20 & 21 Geo. V, c. 35 (1930); 4 Vernier, American Family Laws § 263 (1936); U.S. Children's Bureau Pub. no. 148 (1926). But in the drawing of the English act, and probably also in the drawing of the others, no consideration was given the problem of the adopted child's loss of support. See 192 Parliamentary Debates, Commons, Fifth Series 927 (1926); 196 *id.* 2643 (1926); Parliament, Report of Committee on Child Adoption (1921). It is difficult, therefore, to criticize the New York court, and it is possible that other similar statutes will similarly be construed away.

Agency—Power of Executor's Attorney To Receive Satisfaction of Compromised Claim—[New York].—After suit had been instituted under a wrongful death statute, a compromise was effected, and the plaintiff, as executor, with the approval of the surrogate, signed a release. The defendant thereupon delivered a check, payable to the plaintiff and his attorney, to the attorney who forged the plaintiff's name, cashed the check at the forwarding bank, and absconded with the proceeds. The forwarding bank sent the check to the drawee bank which deducted the item from the defendant's account. The plaintiff, alleging that the suit had never been discontinued, then filed alternative motions: (1) to compel the defendant to pay the compromise sum, or (2) to permit "the plaintiff . . . . to withdraw, cancel, and vacate the general release. . . . ." From an order denying the motions, the plaintiff appealed. *Held*, first motion granted since the defendant had never paid the agreed compromise sum to the plaintiff. *Berlowitz v. Horowitz*, 292 N.Y.S. 880 (App. Div. 1937).

New York courts passing on the apparent authority of an attorney representing a court-appointed fiduciary have departed from conventional agency rules and have denied an attorney authority to receive satisfaction of the claim owing to his client in the client's fiduciary capacity. *Hondale v. Stafford*, 265 N.Y. 354, 193 N.E. 172 (1934).

There is no evidence of a similar departure in other jurisdictions. See the leading case of *State ex rel. Lane v. Ballinger*, 41 Wash. 23, 82 Pac. 1018 (1905); 2 Freeman, Judgments 2321 (5th ed. 1925); 2 Black, Judgments 1457 (2d ed. 1902). The New York rule, obviously designed to protect the beneficiary, is an extension of the protection granted the beneficiary in the form of judicial supervision of the discretionary acts of the fiduciary. Thus, the fee charged by the fiduciary's attorney and the compromise of claim made by the fiduciary or his attorney must receive judicial approval. Cahill's N.Y. Cons. L. 1930, c. 13, § 133 (5); *State ex rel. Scannell v. District Court, Bamsey County*, 114 Minn. 364, 131 N.W. 381 (1911); *Eidam v. Finnegan*, 48 Minn. 53, 50 N.W. 933 (1892); 2 Woerner, American Law of Administration § 326 (1923). This judicial scrutiny is desirable as a prophylaxis as well as a corrective of waste of assets by the fiduciary.

There is, however, nothing in the executor's position that justifies a departure from conventional agency rules when the obviously ministerial act of collection is involved. The agency rule is based on the fact that the attorney's possession of a release signed by the plaintiff and his active participation in the litigation indicate to a stranger that he has been authorized to receive satisfaction. 2 Freeman, Judgments 2316 (5th ed. 1925); Rest., Agency, §§ 8, 49 (1933); see also *Tito v. Seabury*, 18 Misc. 283, 41 N.Y.S. 1041 (1896). These badges of authority become in no way less persuasive when the attorney is acting for an executor. Nor does the fact that the court decree, approving a compromise, orders payment to the executor indicate an intention on the part of the court to curtail the authority of the attorney to collect. When an essentially analogous equitable decree orders payment to a specific plaintiff, there is no hint that the order to pay a specific plaintiff affects the authority of his attorney. *Yokum v. Tilden*, 2 W.Va. 167 (1869). Furthermore, the method of payment adopted by the defendant in the instant case seems desirable since in normal situations it will operate to safeguard both the claims of the attorney to compensation and the claim of the executor to satisfaction.

Whether or not the plaintiff is considered bound by the act of the attorney, the ultimate loss will be borne by the forwarding bank. In either event, the plaintiff neither expressly nor impliedly authorized his attorney to endorse his name. Authority to collect, not carrying with it the power to endorse, the endorsement of the attorney was a forgery and passed no title to the forwarding bank. *Porges v. United States Mortgage and Trust Co.*, 203 N.Y. 181, 96 N.E. 424 (1911); *Graham v. United States Savings Institution*, 46 Mo. 186 (1870); *Esdalia v. LaNauze*, 1 Younge & Coll. 394 (1834); Brady, Forged and Altered Checks 217 ff. (1925); N.I.L. § 23. Thus, if there is no apparent authority, the plaintiff may recover from the defendant, and the latter may recover from his bank, the drawee, for charging his account with a payment to one claiming under a forged endorsement. *Shipment v. Bank of New York*, 126 N.Y. 318, 27 N.E. 371 (1891); *First National Bank of Chicago v. Pease*, 168 Ill. 40, 48 N.E. 160 (1897); *Midland Savings and Loan Co. v. Tradesmen's National Bank*, 57 F. (2d) 686 (C.C.A. 10th 1932). The drawee bank, in turn, may then recover from the forwarding bank. *Seaboard National Bank v. Bank of America*, 193 N.Y. 26, 31, 85 N.E. 829, 831 (1908); but *cf. Provident Savings Bank and Trust Co. v. Fifth-Third Union Trust Co.*, 43 Ohio App. 563, 183 N.E. 885 (1932). The fact that the instant decision may result in circuity of actions before the ultimate loss is placed on the forwarding bank is an additional objection to holding that the attorney was authorized to receive satisfaction.

If such authority on the part of the agent were recognized, the plaintiff, as owner of the check, might nevertheless recover from the forwarding bank. *California Stucco Co. v. Marine National Bank*, 148 Wash. 341, 268 Pac. 891 (1928); 4 Wash. L. Rev. 42 (1929); *Independent Oil Men's Ass'n v. Fort Dearborn National Bank*, 311 Ill. 278, 142 N.E. 458 (1922) (payee ratifies the collection of the forwarding bank and sues for money had and received); *Schaap v. State National Bank of Texarkana*, 127 Ark. 251, 208 S.W. 309 (1918) (conversion); *cf.* the Pennsylvania doctrine in *Tibby Bros. Glass Co. v. Farmers and Merchants Bank*, 220 Pa. 1, 69 Atl. 280 (1908); see also Chafee, Progress of the Law—Bills and Notes, 33 Harv. L. Rev. 225, 269 (1919); 31 A.L.R. 1068 (1924). If, for some reason, the plaintiff prefers to recover from the drawee bank, it may in turn, as when its drawer sued, recover over from the forwarding bank. *Chrahe v. Mercantile Trust and Savings Bank*, 295 Ill. 375, 129 N.E. 120 (1920).

Bills and Notes—Fictitious Payee—Payee Fictitious although Fiction not Known to Teller Executing Cashier's Check—[California].—One Williams, director and officer of X Corporation, who with one other official was authorized to draw corporate checks on the plaintiff bank, dishonestly procured the necessary countersignature on checks made payable to the drawee plaintiff bank. Over a period of time he took them, with written requisitions signed by himself, to the plaintiff bank and procured cashier's checks payable some to A and some to B, both actual persons known to Williams. Williams did not deliver the cashier's checks to A or B, but indorsed first the payee's name and then his own, and deposited the checks to his own account in the defendant banks. The defendant banks stamped the checks "all prior indorsements guaranteed" and collected the amounts of the checks from the plaintiff bank. Upon discovery of William's defalcations from his corporation, the plaintiff bank refunded to the corporation the sums lost through the transactions and then sued the defendant banks on their guarantee of indorsements. *Held*, judgment for the defendant banks affirmed. The checks were payable to bearer because the payee was fictitious under § 9 (3) of the Negotiable Instruments Law. Consequently, payment of the checks by the drawee bank was authorized, and the debit to X Corporation's account was proper; the refund by the plaintiff to X Corporation was a gratuity, and gave the plaintiff no right of action against the defendant banks. *Union Bank & Trust Co. v. Security First Nat'l Bank*, 65 P.(2d) 355 (Cal. 1937).

The decision makes a desirable extension of the fictitious payee concept but runs counter to the usually accepted interpretation of § 9 (3) of the N. I. L. which provides: "The instrument is payable to bearer when it is payable to the order of a fictitious person . . . . and such fact was known to the person making it so payable." The "person making it so payable" could be construed to refer to: (1) the person supplying the name of the payee to the one executing the instrument; (2) the person writing the payee's name on the instrument; (3) the person signing the instrument; (4) the person delivering the instrument. Courts, however, have generally construed the phrase as referring to the signer, and the payee is said to be fictitious only if such was the intention of the signer. *Armstrong v. Nat'l Bank*, 46 Ohio St. 512, 22 N.E. 866 (1889). Application of the intention criterion to the instant case involves peculiar difficulties. The teller, mechanically drawing up a cashier's check, probably had no intention in regard to the payee. But if he had any intention, it very likely was that the payee be real since that is the normal state of events. Consequently, a strict application of the intention