

FORGED CHEQUES.

The question of the rights and liabilities arising under forged cheques is somewhat complicated. The answer involves the consideration of combinations of circumstances the slightest variation in which may affect the solution that should be given. Nor is the law of England always a guide for, as the student of this subject must remember, in England a bank may charge its customer with payments made under a forged endorsement of the customer's cheque, but in Canada it is otherwise. Under the law of Canada a bank which pays a cheque on a forged endorsement cannot charge the drawer therewith. The consideration of the subject under the following heads while not exhaustive may afford an answer to most of the problems that arise in actual practice in connection with forged cheques:—

1. Can the rightful payee of a cheque sue a bank which has paid on a forged endorsement? Certainly not in England where, as I have stated, by statute the bank is free from liability if it pays without negligence and in the ordinary course of business, but in Canada where a bank is not so protected the answer must be "Yes." See *Smith v. Union Bank*, 45 L.J.Q.B. p. 149.

2. Can the rightful payee sue the drawer of a cheque where payment has been made by a bank under a forged endorsement? The question has been expressly decided in England in the case of *Charles v. Blackwell*, 2 C.P.D., p. 151. That was a case where a cheque drawn by the defendant on a certain bank in favour of the plaintiffs was endorsed by an agent of the plaintiffs who had no authority to endorse the cheque. The bank paid the agent and the plaintiffs thereupon sued the drawers, but without success. It was held that inasmuch as the bank was authorized to charge the drawer it would not be right that he pay twice. But this reasoning does not apply to Canadian law. In Canada, then, it would seem that the payee would have a right to sue the drawer. The reasoning in *Charles v. Blackwell* is founded entirely on the English statute. But it would seem that in order to succeed the payee must have the cheque in his possession or power at the time of suit. *Kelly v. C.P.Ry.*, 9 W.W.R., p. 531. The position the