

stated by Denman, J., at p. 242: "A document given 'by way of charge' is not one which absolutely transfers the property with a condition for reconveyance, but is a document which only gives a right to payment out of a particular fund or particular property, without transferring that fund or property."

BILL OF EXCHANGE—FORGERY OF NAME OF PAYEE—"PAYEE A FICTITIOUS OR NON-EXISTING PERSON"
—BANKER, LIABILITY OF, FOR PAYING ON FORGED INDORSEMENT—NEGLIGENCE

In *Vagliano v. The Bank of England*, 23 Q.B.D. 243, which we noted, ante p. 146, when before Charles, J., his judgment has been affirmed by the majority of the Court of Appeal (Cotton, Lindley, Bowen, Fry, and Lopes, L.JJ.), the head of the Court, Lord Esher, M.R., however, dissented. It may be remembered that the action was brought by the acceptors of bills of exchange for a large amount, for a declaration declaring that the defendants were not entitled to debit the plaintiffs with the amount of these bills which they had paid upon a forged indorsement of the names of the payees. The bills in question were purported to be drawn by a foreign customer of the acceptors in favour of another foreign firm, and were presented to the acceptors in the ordinary course of business and accepted by them. The names of the drawers, however, were in fact forged by a clerk in the acceptor's employment, and after procuring the plaintiff's acceptance this clerk then forged the names of the payees and procured payment of the bills. The point on which the Court differed was whether the payees were to be regarded as real or fictitious persons. There was a firm of the name of the payees, but they had nothing whatever to do with the bills, their names being inserted as payees by the forger of the name of the drawers. The majority of the Court were of opinion that the payees were real and not fictitious persons, and therefore the bank was precluded from charging the plaintiffs with bills paid on the forged indorsement. On the other hand Lord Esher, M.R., was of opinion that the bills in question were not really bills of exchange for lack of a real drawer or a real payee, but that the plaintiffs by their acceptance were estopped from disputing the validity of the signature of the drawer of the bills, but as under the Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61), s. 7, ss. 3, "where the payee is a fictitious, non-existing person, the bill may be treated as payable to bearer," he was of opinion that the bank was entitled to charge the plaintiffs with the bills, because though there was a real firm of the name of the payees, yet as regards these bills it was never intended that that firm should have, and they never did have, any right to the bills in question, and therefore, as regards these bills, were fictitious payees, and the bills were, therefore, under the Act above referred to, payable to bearer, and therefore the bank was entitled to charge the plaintiffs with the bills. Considering the immense sum involved, and the difference of opinion in the Court of Appeal, there can be little doubt that the case will be carried to the House of Lords.

SHIP—CHARTER PARTY—LIABILITY OF OWNERS.

The only case necessary to be noticed in the Probate Division is *The Durham City*, 14 P.D. 85. This was an action by a master against the owners of a vessel