

Full Court.]

[June 29.

UNION BANK v. DOMINION BANK.

Bank cheque—Forgery—Indorsement of cheque—Liability as between banks for loss of money paid on forged cheque.

Appeal from decision of DUBUC, C.J., noted vol. 42, p. 773, allowed with costs.

Held, that, the cheque having been marked on the back with the rubber stamp of the Dominion Bank before going through the clearing house in a manner which, under the rules of the clearing and the practice among Winnipeg bankers, had the legal effect of an indorsement in blank, the defendants were liable to repay the amount to the plaintiffs either by the direct effect of the statute: Bills of Exchange Act, R.S.C. 1906, c. 119, ss. 50, 133(c); or because of the warranty to be implied from their indorsement that the cheque was what it purported to be and that they were the lawful holders: *Bank of Ottawa v. Harty*, 12 O.L.R. 218.

Held, also, that the fact that the defendants waited until after they knew that the plaintiffs had honoured the cheque before paying out the \$800 to the forger, made no difference, as the liability was either statutory or contractual.

Leather v. Simpson, L.R. 11 Eq. 398; *Smith v. Mercer*, 6 Taunt. 76, distinguished. *London & River Plate Bank v. Bank of Liverpool* (1896), 1 Q.B. 7 dissented from.

Wilson, for plaintiffs. *Munson*, K.C., and *Laird*, for defendants.

Howell, C.J.A.]

WATT v. DRYSDALE.

[July 8.

Animals running at large—Fences—By-law regulating.

Appeal from the verdict of County Court judge. The plaintiff's claim was for damage to his crops caused by the cattle of defendant, an adjoining proprietor, breaking through the line fence between the two farms. At the trial before the County Court judge it was shewn that such line fence was not of the character required by the by-law of the municipality. The by-law contained a clause (No. 7) providing that no person should be entitled to recover damages for injuries done to his crops by trespassing cattle unless his fences were of the character required by the by-law. It also contained a number of clauses