paid. The debtor has no right to withhold payment unless a receipt is given, and a refusal by the creditor to give a receipt constitutes no defence to an action for the debt against the debtor who has tendered the amount on condition that he be given a receipt therefor. If this principle were applied to the case of payment of a cheque payable to bearer, the bank would be held to have no right to require indorsement by the holder before payment; but the latter case stands on a little different footing. In some States a bank is directly liable on a cheque to the cheque holder, and would then stand in the relation of debtor. In others it is under no obligation to the holder, but its duty is solely to the drawer to honor his cheques when presented; and its relation then to the holder would be rather that of agent of the debtor to pay the cheque. In either view it could be urged that as indorsement of a cheque before payment was a reasonable requirement, and contemplated in the contract of the bank with the depositor to honor his cheques, the holder, by accepting the cheque in lieu of money, took it subject to this requirement, and was necessarily bound thereby. However this may be, it is certainly customary for cheques payable to bearer to be indorsed by the holder before payment, and is a requirement which should be complied with.'"

Reference is then made to the case of *Osborn* v. *Gheen*, 3 Central Rep. 762, where the Supreme Court of the District of Columbia held:

"'There is no necessity at all for the legal operation of a payment that the payee should indorse the paper. All that he has to do is to receive the money. The party to whom it is directed is ordered to pay so much money to him. All that the drawer has to do, therefore, is to satisfy himself that when the order is presented the true and proper person is there at hand to receive the payment and to receipt for it. It is true it is common for the payee to indorse in blank at the bank, or for the holder of an instrument to indorse in blank when he receives payment, as a voucher for the payment. But a voucher is not necessary, nor is a receipt necessary, to give validity to a payment. The bank makes the payment of course at its peril, if the payee shall afterwards challenge the payment and say the money was not paid to him but to somebody else. Then it is a mere question of identity as between the payee and the bank; but it does not go to the legal integrity of the instrument.

"'The bank upon whom the note or bill of exchange is drawn is authorized and required to pay the money to the payee, knowing him to be the identical man intended, without any indorsement and without any receipt. Beyond that, a prudent man might well hesitate to indorse a paper which was given him to be paid at the bank for this reason, that if he indorsed it in blank and without qualification, if the bank pleased it could, as we know banks sometimes do, put that paper into circulation again; and if it should get into the hands of a *bonâ fide* holder, he might hold the payee responsible upon his blank indorsement. Therefore a prudent man might properly decline to indorse, in the legal sense of the term, a paper when it was paid to him. He should receipt it as a matter of satisfaction between him and the other; but he should qualify his indorsement by some word or sign or indication that he did not mean to throw the paper into circulation again, but meant to make his name upon it only the representa-