

U. S. Rep.] ALLEGHENY SAV. BANK V. MEYER & BRO.—GENERAL CORRESPONDENCE

dited in the account as cash, the presumption is that it was taken and received by the bank as cash. But is not this presumption met and rebutted by the answer? If Richardson's check was taken and received as cash, the fact that it was protested for non-payment, and still remains in the possession of the bank unpaid, would not leave Kerwin indebted to the bank in the sum of \$644.70, as alleged in the answer; and in this respect the answer would not be true. There may have been an agreement between the bank and Kerwin that all checks deposited by him and credited in his account as cash, if not paid on presentation, should be made good by him; or he may have indorsed Richardson's check; and, in either event, its protest for non-payment on presentation, and its remaining in the possession of the bank, unpaid, at the date of the answer, would leave Kerwin indebted to the bank as stated by the cashier. As his answer was drawn up without the advice or assistance of counsel, he may have unwittingly omitted to state the facts upon which Kerwin's liability for the check, and the bank's right to set it off against the balance appearing in his favor depend. If Richardson's check was received absolutely as cash, without indorsement by Kerwin, and without any agreement on his part to make it good, if not paid on presentation, the cashier could hardly have supposed that its non-payment would render him liable therefor, and entitle the bank to charge him therewith. A garnishee's answer is not to be construed with the same strictness as a defendant's affidavit of defence. A defendant, under our affidavit system, is bound to set forth every fact material and necessary to his defence; and every fact, not distinctly and positively averred, is presumed not to exist. The affidavit must show *prima facie* that the defendant has a good defence to the action, otherwise judgment will be entered against him. But a garnishee is not bound to set forth "specifically and at length the nature and character of his defence" to the attachment. He is only required to answer the interrogatories that may be submitted to him. And judgment will not be entered against him on his answer, unless he expressly or impliedly admits his indebtedness to, or his possession of assets belonging to the judgment debtor; and the admission ought to be of such a character as to leave no doubt in regard to its nature and extent.

We are of the opinion that the answer in this case does not contain such a clear and distinct admission of indebtedness by the bank to Kerwin as would warrant the entry of a judgment against it for the balance appearing in his favor on the face of the account, and the judgment of the court below must, therefore, be reversed.

Judgment reversed and procedendo awarded.

We were rather startled by reading in a recent number of a leading English law periodical that "Lord Commissioner Richards, Q. C., has been appointed Chief Justice of the Queen's Bench in Ontario." We presume the writer intended to refer to Mr. Richards, late Chief Justice of the Common Pleas. We should have supposed it quite impossible for our "big brother" to have made a mistake even in a trifle like this.

GENERAL CORRESPONDENCE.

Can an Attorney collect a bill for professional business done in a Division Court?

TO THE EDITORS OF THE CANADA LAW JOURNAL.

GENTLEMEN,—This seems at first sight, as asking a strange question of you, or any legal minds. One would suppose that the common sense of the thing—that the self-evident right of a lawyer to collect for work done in any court, or in any capacity professionally—under a responsibility as he is for his acts—would be so plain that none (much less a judge in a court) would question it. I had the misfortune, may I say? to have this question come up before a County Judge in an out county, near Toronto, lately, in trying to collect bills in two of his Division Courts, and of having the rule laid down, that he could not give me, as an attorney, the proved items of my bills, which in any other court would have been allowed. This happened in two different courts in two different suits. In both instances I produced to him and proved, at considerable expense and trouble, *written retainers, employing me to do the business charged as an attorney, and agreeing to pay for it.* Yet I was told that attorneys have no right to collect bills in Division Courts for business done therein. It struck me as strange that any man, especially a person placed in the responsible position of a judge, could have a mind so constituted, as not to be able to see that he was not only trampling on a well-known principle of law, *but much more on every principle of natural equity.* Any one who knows what equity is, knows that no client has a right to employ a man as a lawyer to do work, which he could not do—to do what is strictly professional business, such as writing a lawyer's letter, attending to examine judgments, papers, affidavits, and drawing affidavits of a special kind, and giving special directions how to serve and the time to serve—and after the work is done turn round and say, "You did the work but not in a court of record, and you shall get no pay!" Any one sitting as a judge, who ought to know what law is, ought to know that the common law of England distinguishes between professional work, skilled work, and mere manual labor. The artist is not paid, the doctor is not paid, the lawyer is not paid, nor the skilled artizan, as a mere