seemed to almost admit that this was inevitable of itself; but he insisted that an *exception à la forme* that had been dismissed, and as he contends, unjustly dismissed, can be brought before us now. We are against this pretension. We are far from saying that the *exception à la forme* could not, or ought not to have been considered with the final judgment, if it had been urged at that time; but we see the inscription for hearing on the merits limited merely to that, and not including the exception. There is merely the usual inscription for hearing on the merits of the *fond;* and the judgment does not mention, nor will we presume, against its contents, that the form on which the party now wants to insist was ever brought before it. There is an exception filed to the judgment dismissing the plea as to the form; this shows that the party excepting to it did not acquiesce; but as long as he refrains from bringing it directly in question either by the terms of his inscription here, or in the Court below, we cannot see that we ought to interfere.

Judgment confirmed.

Coursol, Girouard, Wurtele & Sexton for plaintiffs.

Davidson & Cushing for defendant.

SUPERIOR COURT.

MONTREAL, February 16, 1880.

WILSON v. LA BANQUE VILLE MARIE.

Interest on deposit ceases from date of acceptance of check by which such deposit is transferred to another party, though the check be not then presented for payment.

The plaintiff, a merchant having a deposit account with the defendants, claimed the sum of $168.98 as the balance due him, including interest at a stipulated rate of six per cent. The defence of the bank was that only $18.89 remained due, which it tendered. The question between the parties arose as to the interest on $15,131, amount of two checks, one for $10,000, presented August 7, and the other for $5,131, presented August 8, and certified good by the bank, but not paid until October 8 following. The plaintiff contended that he was entitled to the interest until payment, while the bank said the interest stopped at the time the checks were presented and certified.

MACKAY, J., maintained the pretension of the defendants, and gave judgment only for the amount tendered. The grounds of the judgment were that the two checks drawn by the plaintiff were certified good by the defendants in the usual course of banking business, and the amounts were charged to the drawer, the holders of the checks taking possession of them so certified. As between plaintiff and defendants, the operation was much the same as if the bank had paid the money instead of certifying the checks. The obligation of the bank then was to pay to any holder of the checks who asked for the money, and it had afterwards paid the amount to a third party. The plaintiff ceased to be entitled to any interest after the funds had been so withdrawn from his name.

The judgment is as follows:—

"Considering that the two checks drawn by plaintiff upon defendants were certified good by defendants' Bank in the usual course of banking business and the amounts charged to the drawer, the holders of the checks taking possession of them certified as aforesaid; and all the money of plaintiff in the Bank was necessary to meet the said accepted checks, which the Bank became liable for to any person who, afterwards, should present and ask payment of said certified checks;

"Considering that, as between plaintiff and defendants, the operation was much the same as if the Bank had paid him the money, instead of certifying his checks and delivering them to the then holders of them, who took them away;

"Considering that the defendants' obligation afterwards was to pay to any holder of the checks, and they have paid them to a third party, such holder, to wit, the Compagnie de Prêt, and the defendants have been freed from obligation whatever, and now have in their own possession the said two checks of plaintiff;

"Considering that the original contract by the Bank to pay plaintiff interest on deposits ended upon the Bank's certifying his checks, charging them against him as aforesaid, and that no new contract has supervened, and that plaintiff shows no cause for his present claim against defendants;