

the drawer suffered actual damage by the delay, the drawer was absolutely discharged, even though the damage suffered was less than the amount of the cheque, e.g., where the bank failed, but ultimately paid a substantial portion of its liabilities, *Alexander v. Burchfield* (1842), 7 M. & G. 1061. It will be seen that the former part of the common law rule is impliedly preserved by the Act, namely, that if the drawer does not suffer damage by the delay, the holder may present a cheque within any period not exceeding the period of limitation of action. The drawer of a bill of exchange payable on demand is, however, by s. 86 of the Act, discharged if the bill is not presented for payment within a reasonable time after its issue. Bu. see *Vermette v. Fortin*, 52 Que. S.C. 229, where it was held that more than two years was a reasonable time under the circumstances. The drawer of a cheque in such case is discharged only if he had the right at the time of presentment, as between himself and the bank, to have the cheque paid, and suffers actual damage through the delay and only to the extent of such damage.

In *Revelstoke Sawmill Co. v. Fawcett*, 8 W.W.R. 477, F., in settlement of a claim for material supplied, sent to R. a cheque drawn on the Dominion Trust Co. R. did not present the cheque for five days. Upon presentation it was dishonoured, the Dominion Trust Co. having suspended payment. It was held that if the Dominion Trust Co. was an incorporated bank so as to come within the definition of bank contained in the Bills of Exchange Act, F. was discharged, as to the amount of actual damage suffered by him through the delay in presentation, and R. under s. 166, sub-sec. (b) of the Act, became a creditor in lieu of F. of the Dominion Trust Co. But if the Dominion Trust Co. was not an incorporated bank as defined by the Act, not only was F. discharged, in respect of the bill, but he was also discharged from his liability on the original consideration for which it was given.

Clause B. of s. 166: The holder of such cheque, as to which such drawer or person is discharged, shall be a creditor, in lieu of such drawer or person of such bank to the extent of such discharge, and entitled to recover the amount from it.

This clause has adopted the principle of the civil law and modified the general rule of s. 127, that a cheque does not operate as an assignment of funds in the hands of the bank. If the drawer is discharged under clause (a) the holder may recover from the bank out of the drawer's funds, to the extent to which the drawer is discharged, *Banque Jacques-Cartier v. Limoilou* (1899), 17 Que. S.C., at p. 223. If, however, the drawer had no funds to his credit, but was authorized to overdraw, the drawer would still be discharged, but the holder could not prove against the bank.

If the delay in presentment is pursuant to an agreement between the drawer and the holder, the drawer would have to bear the loss resulting from the failure of the bank in the meantime.

*Marreco v. Richardson*, [1908] 2 K.B. at 593: The holder should present the cheque within a reasonable time of its issue, not only to guard against the contingency of the bank failing (see *Revelstoke Sawmill Co. v. Fawcett*, *supra*) but to guard against any possible revocation of the bank's authority to pay as by its receiving notice of the customer's death, the holder should also bear in mind that he may be put to much trouble and inconvenience by his neglect to present the cheque within a reasonable time because banks in general