

consent of mankind, which gives them the credit and currency of money, to all intents and purposes." *Miller v. Race* (1758), 1 Burr. at p. 457, 3 R.C. at p. 63.

In *Goodwin v. Roberts*, L.R. 10 Ex., at p. 351, Cockburn, C.J., notices another very remarkable instance of the efficacy of usage. It is notorious, he says, that with the exception of the Bank of England, the system of banking has recently undergone an entire change. Instead of the banker issuing his own notes in return for the money of the customer deposited with him, he gives credit in account to the depositor, and leaves it to the latter to draw upon him, to bearer or order, by what is now called a cheque. Upon this state of things the general course of dealing between bankers and their customers has attached incidents previously unknown, and these by the decisions of the courts have become fixed law. Thus, while an ordinary drawee, although in possession of funds of the drawer, is not bound to accept, unless by his own agreement or consent, the banker if he has funds, is bound to pay on presentation of a cheque on demand. Even admission of funds is not sufficient to bind an ordinary drawee while it is sufficient with a banker; and money deposited with a banker is not only money lent, but the banker is bound to repay it when called for by the draft of the customer. Besides this, a custom has grown up among bankers themselves of marking cheques as good for the purposes of clearance, by which they become bound to one another.

Bills of lading may also be referred to as an instance of the manner in which general mercantile usage may give effect to a writing which without it would not have had that effect at common law. It is from mercantile usage as proved in evidence, and ratified by judicial decision in the great case of *Lickbarrow v. Mason* (1787), 2 T.R. 63,⁷ that the efficacy of bills of lading to pass the property in goods is derived.

(7) Reversed by the Exchequer Chamber, 1 H. Bl. 357; removed into the House of Lords, which awarded a venire de novo, 4 Brown P.C., 2 ed. 57, 6 East 20, note; second trial before the King's Bench, 1794, 5 T.R. 683, 4 R.C. 756.