both parties of the personal recollection of those engaged in the transaction. But this is a disadvantage which attaches to both parties. If the defendant, being a moneyed institution, kept its books with care and accuracy, the books ought to have disclosed it at once whether its cash on hand was $1,000 in excess of what its books required. On the basis that there was an overcharge of this amount, the defendant must have been guilty of negligence in not discovering it on the very day it occurred. The record does not disclose that the defendant is put to any disadvantage by the delay of the plaintiff in making discovery of the claimed overcharge. Its books, so far as appears, are in existence, and show its version of the transaction. If the plaintiff's contention is true, the defendant for many years has had this $1,000 to use probably without any charge for interest. We find no ground to justify the action of the trial court on the basis of an estoppel *in pais*.

2. The defendant also contends that the action of the County Court should be upheld, because the claim of the plaintiff, if otherwise established, on the undisputed facts, was barred by the Statute of Limitations. It appears that the plaintiff in April, 1878, drew out the balance standing to his credit upon the books of the defendant, and that he did not keep any deposit or account with the defendant for about two years thereafter. He then opened a new or further account. The defendant claims that the draft for the balance, in 1878, was a demand for what then was due, and that the statute would begin to run from that date. It is well settled that a deposit of this kind is not payable except upon demand, and that the course of business requires the demand to be made by a written voucher or check. But checks are only demands for the amounts named in them. Hence the check drawn for the balance shown by the defendant's books, in 1878, was not a demand for the $1,000 now claimed by the plaintiff. The defendant further contends that passing back the plaintiff's deposit book, on this occasion and all other occasions, after the now claimed $1,000 was charged thereon, was legally a denial by the defendant that it had that $1,000 subject to the check of the plaintiff, and a refusal to pay it if demanded; and thereupon the plaintiff had a right of action for its recovery, without demand. Ordinarily, a denial of the debt, subject to payment only on demand, is a waiver of the right of demand, and the creditor may sue at once without making demand. To have this effect, the denial must relate to the identical sum sued for. Where the debtor holds such sum under an honest mistake, his neglect or refusal of payment, to amount to a waiver of a formal demand, must occur after his attention has been called to the circumstances of the claimed mistake, and after he has had reasonable time and opportunity to investigate the circumstances. On none of the occasions in which the plaintiff's deposit book was written up by the the defendant, and returned to the plaintiff, subsequently to the claimed overcharge, was attention of either party called to the fact of the overcharge. Hence no waiver of demand on the part of the defendant arose. On the facts disclosed the plaintiff had never drawn a check for the claimed $1,000, nor demanded it until 1889, and no right of action arose in favor of the plaintiff for its recovery until then. On these views, neither of the contentions of defendant sustains the action of the County Court in ordering the verdict. Judgment reversed and cause remanded.—*N. Y. Law Journal.*