

The Canada Law Journal.

VOL. XXVII.

MAY 1, 1891.

No. 8.

MR. JUSTICE STEPHEN, whose mental affliction has given rise to much unfavorable comment in the English newspapers, has resigned his position and retired from the Bench. The complications which his continued presence there would have created have thus happily been avoided. The learned judge's retirement was made the occasion of an affecting demonstration by both the bench and the bar, and he himself is said to have been reduced to tears. In the palmy days of his career he made a name in the profession which will be enduring, and he will be known to posterity, notwithstanding the circumstances which have led to his retirement, as a lawyer of profound learning and great mental grasp, and as one of the ablest among the many able men who have been his contemporaries.

A RECENT case (*Fonner v. Smith*) decided in the Supreme Court of Nebraska recognizes the right of a checkholder to sue the bank on which the check is drawn when payment is refused. *The Banking Law Journal*, in commenting on it, remarks: "What is the holder's right to the fund, for example, where the drawer has failed and the deposit passed into the hands of an assignee or receiver before presentment? Has he any preference in payment? Or, where the fund has been seized by an attaching creditor of the depositor? And again, has he any remedy against the bank if it refuses to pay the check, or must he look to the drawer or indorsers alone? These questions all involve an inquiry regarding the extent to which the check will be deemed an assignment of the fund called for.

"The United States Supreme Court, New York, and many other States, hold that a checkholder of an unaccepted check cannot sue the bank for refusal to pay, and various reasons are advanced in support. Among others, no privity of contract between bank and holder. On the other hand, the great commercial State of Illinois, as well as many other States, the latest Nebraska, announce that there is such a right of action. As stated by the Supreme Court of the latter State, the check is in effect an assignment of the amount to the holder, and the bank, by receiving the deposit, has impliedly promised to pay him on presentation. . . . One point only will be dwelt upon, regarding the drawer's right of revocation after issue of the check under the law of Nebraska as just announced. We are uninformed whether it has been customary heretofore for bankers in Nebraska to regard themselves, before certification of a check, as responsible to the drawer solely, and under no obligation nor liability to the holder concerning payment. Assuming that such has been the custom or understanding, at least