

operations incidental to banking have outgrown the nomenclature at one time all sufficient.

79. If the Bank could be held in the character of trustee, it would follow that the giving of a cheque upon a Bank would operate as an assignment of the drawer's funds, *pro tanto*, and would enable the payee to demand the amounts as of right from the Bank (provided there were sufficient funds of the drawer to meet it), and upon non-payment to sue the Bank. The right of the check-holder to sue the Bank has, however, in England and the United States, after continued litigation, been conclusively denied by courts of unquestionable authority, and the denial has been based in great measure upon the fact that the Bank is not in any sense a trustee. In Canada, however, according to the law of Quebec, a depositor in a Bank transfers his rights to the holder of his cheque on the funds to his credit in the Bank, so as to confer on him the same rights which the depositor himself possesses. (1) This decision, however, did not proceed in any manner from the assumption that a Bank occupies the position of a trustee with regard to moneys deposited with it, but from the positive enactment that Bank cheques are not subject to the provisions of the law governing the sales of debts and rights of action in general, which give no possession available against third persons until signification of the transfer has been made to the debtor and a copy of it delivered. The action was brought by the plaintiff Marler against the Molson's Bank for the amount of a cheque, about \$700, signed by one Parker, which the Bank refused to pay. The defendant pleaded among other things that there was no privity of contract between the holder and the Bank, which would sustain a suit by the former, until the latter had done some act, as acceptance, by which it would have created that privity. The court said: "Does " a depositor in a Bank transfer his rights to the bearer of his " cheque on the funds to his credit in the Bank, so as to confer " on him the same rights which the depositor himself possesses ?

"The check is a transfer by the depositor to a person named or bearer. Presentation alone constitutes signification. Article 2350 of the Civil Code says that, 'checks are payable on presentment, without days of grace.' After signification by this presentment, the transferee, called the bearer, is considered to be the proprietor of the claim transferred. The *lien de droit* between the

(1) Marler v. The Molson's Bank, 2 L. N. 166 (1879).