

dant to shew that the money he received was not lent to him; but with this the learned Judge did not agree.

When the parties to an action were not competent witnesses this question frequently arose, and the cases (see Grant's Banking Law, 6th ed., p. 94) uniformly determined that the cheque was only evidence of the payment of money and not proof of a loan, for the payment might equally well have been on account of a pre-existing debt or a gift. See *Foster v. Fraser* (1841), R. & J. Dig. 652; *Allaire v. King* (1908), Q.R. 33 S.C. 343.

It was, therefore, clear that there was no jurisdiction in the Division Court to entertain the action, and the motion must succeed.

Prohibition granted, with costs, fixed at \$25.