

BINGHAM, J. The plaintiff was injured on a highway in Northwood, March 11, 1888. On the 20th of the same month he filed his written statement, under oath, in compliance with the requirements of Gen. Laws, c. 75, s. 7, as amended by Laws 1885, c. 65, s. 1, except that the plaintiff's attorney, who prepared his statement, erred in averring the date of the injury to be the 12th instead of the 11th of March.

It appears that the error happened through a mistake and accident for which the plaintiff was not in fault, and that manifest injustice would be done if he should not be allowed to file a new claim. Whether the error in naming the day on which the injury happened occurred without the fault of the plaintiff, and whether manifest injustice would be done to him if he should not be allowed to file his new claim, were questions of fact to be found at the trial term, and are not generally considered at the law term. *Sewell v. Webster*, 59 N. H. 586. These questions were both found by the court at the trial term on evidence which is not reported. It does not appear that these findings were not made upon competent evidence. Injustice might be done to the plaintiff if he should be deprived of the right to litigate the cause of action described in his first sworn statement, because his attorney, without his fault, committed an error in stating the day on which the accident occurred. The case is governed by *Bolles v. Dalton*, 59 N. H. 479, and *Kelsea v. Manchester*, 64 N. H. 570.

Exceptions overruled.

CLARK, J., did not sit: the others concurred.

Drury & Felch, for the plaintiff.

Burnham & Brown, for the defendants.

FALL v. HAINES, *Ex'v.*

The mere delivery of money by A to B is not evidence of B's promise to repay it.

ASSUMPSIT, against the executrix of John S. Haines, for money had and received. The plaintiff put in evidence two checks, drawn by him on a bank, payable to and endorsed by said John; and the defendant admitted that John received the amounts of the checks from the plaintiff's deposit in the bank. One check, dated June 28, 1880, was for \$2,110.56, and the other, dated September 31, 1881, was for \$560.47. A nonsuit was ordered, and the plaintiff excepted.

J. A. Egderly and *W. S. Pierce*, for the plaintiff.

G. E. Beacham and *Frink & Batchelder*, for the defendant. A cancelled check is not evidence of a debt due the drawer from the payee. "The natural inference from giving a check is, that it was given in payment of a debt due the payee from the drawer." Pars. Notes 84; *Fletcher v. Manning*, 12 M. & W. 570. "A check presented and paid is no evidence of money lent or advanced by the banker to the customer. On the contrary, it is *prima facie* evidence of the repayment, to the amount of the check, by the banker to the customer, of money lodged previously in the banker's hands." Byles Bills 83; *Flemming's Ex'rs v. McClain*, 13 Pa. St. 177; *Baker v. Williamson*, 4 Pa. St. 469. Unless it is shown upon what consideration and under what circumstances a check is given, proof of its delivery and payment is not sufficient evidence of a debt. *Aubert v. Walsh*, 4 Taun. 293.

DOE, C. J. The plaintiff, having paid John \$2,110.56 at one time, and \$560.47 fifteen months afterward, produces no notes or other written evidence of John's express promises to repay those sums, and no evidence that there were such writings. The evidence introduced at the trial does not shift the burden of proof, and has no tendency to show it to be more probable that the payments were loans than that they were payments of debts, or parts of other transactions that would not include the receiver's obligation of repayment.

Exceptions overruled.

BLODGETT, J., did not sit: the others concurred.

TUCKER & a., *Ap'ts*, v. BEACHAM, *Assignee*.

No decree of distribution of the assets of an insolvent debtor can be made where none of the claims were proved within one month after the filing of the assignment, and further time was not given by the judge of probate upon cause shown.

CLARK, J. This is an appeal from a decree for distribution of the assets of an insolvent debtor under the statute relating to assignments for the benefit of creditors. The right of the plaintiffs to appeal as parties aggrieved is not questioned by the defendants.

The time allowed by the statute governing assignments (G. L., c. 140; Laws of 1885, c. 85) for the presentation of claims against the debtor is one month after the filing of the assignment, unless