

*Carleton v. City of Regina*, 1 D.L.R. 778, and Annotation to same, ante pp. 783-786.

*H. A. Mackie*, for plaintiff (appellant). *J. C. F. Bown*, for defendant (respondent).

Full Court.]

RUMELY CO. v. GORHAM.

[April 13.

*Accord and satisfaction—Agreement to accept without promise to give consideration—Mutuality—Consideration.*

*Held*, 1. To constitute a bar to an action on an original claim or demand the accord must be fully executed, unless the agreement or promise, instead of the performance thereof, is accepted in satisfaction. See also 7 Halsbury's Laws of England, p. 443; *Stewart v. Hawson*, U.C.C.P. 168, and *Macfarlane v. Ryan*, 24 U.C.Q.B. 474.

2. A document, made after the execution of an executory agreement for the sale of an engine, stating that it was mutually agreed between the seller and the purchaser that whereas the purchaser complained that the engine was defective in certain specified parts and whereas the seller, while not admitting the alleged defects, desired to adjust all differences, therefore in consideration of the seller supplying the purchaser with certain specified new parts of the engine and crediting him with a specified sum on his account, the purchaser admitted full satisfaction of his complaint as to defects and the complete fulfilment of all warranties made by the seller and thereby released and waived all liability on the part of the seller, arising out of the original transaction, such document, however, not containing any promise on the part of the seller to supply the parts or to give the credit mentioned, will not operate as a satisfaction of the purchaser's right of action under the original contract in default of the actual delivery and acceptance of the engine parts, but merely as an "accord" that if the seller did supply the parts and give the credit, then the document should operate as a release to the seller of the claims of the purchaser arising from any defects in the engine.

*G. F. Adams*, for plaintiffs. *C. A. McGillivray*, for defendant.