person quitting his house thereby commits an act of bankruptcy, his intention in quitting is to be considered.* That the question of Neill's intention to pay should also be left to the jury; *Hawse* v. *Crowe*, R. & M. 414. And that, in order to vitiate the contract, the facts must have amounted to the offence of obtaining the goods by false pretences; referring to *Noble* v. *Adams*, 2 March, 370; Holt 251, where it is said, "unless the representations amounted to the offence of obtaining goods by false pretences, we cannot take upon ourselves to say that the contract was altogether void,"† *Armstrong*, Sergeant (with him *Monahan*, Q.C., and *H. H. Maddermot*), *contra*, submitted that the first question was objectionable, as involving mixed matters of law and fact, and that the second was *dehors* the question at issue; relying on the decision of the Court above *Loughnan* v. *Berry*, 5 Ir. L. T. R. 189, and referring to the notes thereto. His Lordship declined to non-suit, or to leave to the jury the question specified. The defendants having accordingly gone into evidence, at the close, *Hemphill*, Q.C., asked his Lordship to leave to the jury the questions:—1. When Neill gave the cheque, did he believe it would be duly honoured on the following day? 2. Did he give the cheque with any intention to defraud the plaintiff?

Monahan, C. J.—I cannot do so. At the furthest, I could only ask had he reasonable grounds for believing that the cheque would be honoured. The second question is unnecessary. I am clearly of opinion that there may be a misrepresentation such as would render the contract voidable, although the facts do not amount to the offence of obtaining the goods under false pretences.

Hemphill, Q.C., asked for a direction that, in case the jury believed that Neill gave the cheque without any intention to defraud, and believing that it would be honoured on the following day, they should find for the defendants: *Bristol* v. *Winsmore*, 1 B. & C. 514. Also, for a direction on the money count, as there was no privity between the plaintiff and defendants: *Baron* v. *Husband*, 4 B. & Ad. 612; and upon the ground, that as the defendants would have had no right to keep the money if demanded by Neill on April 14th, unless Neill owed them money, the defendants were entitled to retain the moneys of their debtor on that day. And further, that, the plaintiff having done no act to disaffirm the sale to Neill before the re-sale of the cattle, the defendants were entitled to a verdict, even though the goods were obtained by fraud on the part of Neill: *Kingsford* v. *Merry*, 11 Ex. 577, 1 H. & N. 503.

Monahan, C. J.—I must decline to direct as required. There may be legal fraud, without an intention to defraud. I think that ordinarily, and having regard to the course of mercantile dealings, a person who, knowing that there are no funds to meet it, gives a cheque to another, who takes it believing that there are such funds, thereby impliedly represents and undertakes that there then are funds to meet it in the bank on which it was drawn. If its payment is to be deferred, or to depend upon a contingency, the person giving the cheque ought to mention that at the time.

His Lordship having charged the jury, left to them the following questions:—

1. When Neill gave the cheque to the plaintiff, did he in effect convey to him that that there were funds in the bank to meet the amount thereof, knowing that there were not funds to meet it; and did the plaintiff take the cheque, believing that there were funds in bank to pay the same, on the faith of such representation?

2. At the time of giving the cheque, had Neill a reasonable ground for believing, and did he in fact believe that there would be funds in the bank to pay same when presented?

3. When the defendants sold the cattle, were they aware of the circumstances under which Neill had bought the cattle, and that the cheque was passed by him by the way of payment therefor, and that there were no funds for the payment thereof except the proceeds of the sale of the cattle by the defendants?

The jury having answered these questions respectively in the affirmative, counsel for the defendants called upon his Lordship to direct a verdict for them upon the second finding, which the learned Judge declined to do; but, on the requisition of the plaintiff's counsel, directed a verdict for the plaintiff, reserving leave, by con-

*See *Fowler* v. *Padgett*, 7 T. R. 509.—Rep.

† The judgment of the Court was delivered by Gibbs, C. J., "one of the most learned and acute judges that ever sat in Westminster Hall" (*per* Lord Tenterden, 2 B. & Ad. 697). The expressions in the text do not occur in the report given in 7 Taunt. 58 (misquoted in Chitty, Cont. 9th, Ed. 379), but appear in the reports of Marshall and of Holt ("a book of no authority," *per* Lee, C. J., 1 Wils. 15). But, whatever the value of the latter reporters, their concurrence is demonstrative of accuracy in this particular case (*cf.*, *per* Lord Mansfield, Cowp. 16); and their reports of it are abundantly confirmed by *Irving* v. *Motley*, 7 Bing. 543. In the latter case, however, Park, J., materially qualifies the inference to which *Nobles* v. *Adams* might have given rise. See also, Benjamin on Sales, 323. With respect to *Irving* v. *Motley*, it may be noted that the report in 5 M. & P. 393 omits a *dictum*, of Tindal, C. J., which appears in Bing.—Rep.