

an oral contract for sale of goods to satisfy the Sale of Goods Act (56-57 Vict. c. 71), s. 4 (1), (see R.S.O. c. 102, s. 12). The facts were that the plaintiff verbally agreed to buy from the defendant for £387 10s. a quantity of saccharine, and on the same day sent the defendant a cheque in accordance with the agreed mode of payment. On the following day—the duty on saccharine having been in the meantime increased—the defendants wrote to the plaintiffs: "As you are aware the duty on saccharine since yesterday has been increased practically double, and unless you are able to pay the excess duty we regret we shall be unable to send you the goods. We will return your cheque with pleasure on hearing that you will not require the goods." The plaintiffs refused to pay the increased duty, there being no stipulation in the contract to that effect, and after some correspondence the plaintiffs returned the cheque a few days later. A Divisional Court (Coleridge and Avory, JJ.) held on appeal from a County Court that there had been a valid part payment within the statute; although a payment immediately returned would not have been sufficient. In this case the Court held that on the facts there had been an acceptance of the cheque as part payment coupled with a threat to return it, if the defendant's further demand in regard to the increased duty was not acceded to, and so read, it was consistent only with a recognition on the part of the defendants of the contract that had been made.

SALE OF GOODS—IMPLIED CONDITION—"MERCHANTABLE QUALITY"
—"IF BUYER HAS EXAMINED THE GOODS"—SALE OF GOODS
Act, 1893 (56-57 VICT. C. 71), s. 14.

Thornett v. Beers (1919) 1 K.B. 486. Although this case turns on the construction of the Sale of Goods Act, 1893 (56-57 Vict. c. 71), s. 14, it is nevertheless deserving of attention as that Act is generally understood to be a codification of the common law on the subject. The Act provides that "where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality; provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed." The defendants, who were desirous of purchasing from the plaintiffs a quantity of vegetable glue, who dealt in that article, and before doing so went by arrangement with the plaintiffs to the warehouse where the glue, which was in barrels, was stored for the purpose of inspecting. Every facility was