

The plaintiffs wrote in reply that they took the cheque on account but asked for a cheque for the balance of the claim. The defendants refused to pay this balance and pleaded accord and satisfaction. Charles, J., held that there was no accord and satisfaction, and gave judgment for the plaintiffs. The Court of Appeal (Lord Esher, M.R., Bowen and Fry, L.J.J.), held that keeping the cheque was, as a matter of law, conclusive that there was an accord and satisfaction of the claim, but that it was a question of fact on what terms the cheque was kept. As Charles, J., had found that fact in favour of the plaintiffs, the defendants' appeal was dismissed.⁵

2. These questions give rise to many difficulties, and several cases must be considered in some detail before we can clearly understand the manner in which these difficulties have been faced by the Judges, and so discover the theory of the law, if theory there be, for some of us may be inclined to say, in the words of a learned American Judge, that "the law did not begin with a theory. It has never worked one out."⁶

In the reign of Henry VI.' the Judges gave an opinion on the questions we are discussing, and in Fitzherbert's Abridgment⁷ their opinion is reported thus: "If a stranger does trespass to me, and one of his relations or any other, gives anything to me for the same trespass, to which I agree, the stranger shall have advantage of that to bar me; for, if I be satisfied, it is no reason that I be again satisfied. Quod tota curia concessit."

In the reign of Queen Elizabeth, *Grymes v. Blofeld*,⁸ was decided, but whether in favour of the plaintiff or in that of the defendant is uncertain. It was an action of debt upon an obligation of £20, and the defendant pleaded a surrender of a copy-

(5) The Court of Appeal relied on *Miller v. Davies*, unreported, but decided by the Court of Appeal on Nov. 10th, 1879. See 22 Q.B.D. at page 812.

(6) Mr. Justice Holmes in "The Common Law." Lecture III. p. 77.

(7) 1422-1461.

(8) 36 H. 6. Title Barre, pp. 1, 166.

(9) Cro. Eliz. 541. 1 Rolle's Abridgment, 471. Condition (F) 5 Vin. Abr. 296; Condition (F.d.) p. 1. See 9 C.B. pp. 195, 196 and 197.