

where expressly accepted by the creditor in satisfaction, or rendered in pursuance of an agreement for that purpose, though without any new consideration, shall be held to extinguish the obligation." This provision is now embodied in the Ontario Judicature Act as s. 58(8). Thus the additional consideration, even though it were only "a tom-tit or a canary," as the late Sir Geo. Jessel remarked, which the common law required, is no longer necessary in Ontario though still a requisite in England, in order to make a payment in cash a satisfaction of a larger sum admitted to be due. The question in Ontario turning now on the fact whether it was, or was not, actually paid and accepted in satisfaction.

Mr. Pitt-Lewis' observations on *Day v. McLea* (1889), 22 Q.B.D. 610, are well founded—that case, as he points out, merely decides that though a cheque is sent in settlement of a larger sum, and is retained by the creditor and cashed by him, it does not constitute an estoppel on the creditor, but that he is at liberty to shew that he accepted it only as a payment on account. Whether that would be the case where the cheque is payable to order, and is expressly on its face stated to be "in full of amount due," we believe has never been decided.

PRIVITY OF CONTRACT.

A agrees with B to pay C, who is not a party to the agreement. To what extent if at all can C enforce the covenant has given rise to much interesting litigation. The authorities are clear that a mere agreement between A and B to pay C, to which C was not indirectly or directly a party cannot be enforced by C. *Re Empress Engineering Company*, 16 Ch. D. 125; *Robertson v. Lonsdale*, 21 O.R. 601, and *Henderson v. Killey*, 14 O.R. 137. To succeed, C must make out a trust in his favour. "In all cases since *Tweedle v. Atkinson*, 1 B. & S. 393, in which a person not a party to a contract has brought an action to recover some benefit stipulated for him in it, he has been driven, in order to avoid being shipwrecked upon the common law rule, which confines such an action to parties and privies to seek refuge under the shelter of an alleged trust in his favour:" Street, J., in *Faulkner v. Faulkner*, 23 O.R. at p. 258.

Tweedle v. Atkinson was an action by plaintiff against his wife's father's estate, to enforce an agreement made between the