

It is conceded, although Mr. Osler says the rule works injustice, that it is an implied term of a contract such as this, that the debtor is to seek his creditor; but it is said that the authorities shew that the implication of such a term may be displaced by the course of dealing between the contracting parties.

I am unable to agree with the contention of Mr. Osler as to the force which he would attach to the various terms of the agreement, which he says indicate that the locus of the contract was fixed in the province of Alberta. And I do not think that this course of dealing displaces the implication which I have mentioned.

The first proposal was that the delivery of the machinery was to be f.o.b., London. That was objected to by the appellant, and the delivery was arranged to be f.o.b., Edmonton: that I think only indicates that the appellant was unwilling to take the risk of any loss happening to the machinery, which was being manufactured for him in London, in the course of its transportation to him at Edmonton.

In order to shew that the course of dealing was inconsistent with its having been intended that the payments should be made at London, reliance was placed on the fact that a draft for \$1,000, on account of the purchase price, was drawn by the respondent at London, on the appellant, and accepted payable at Edmonton: and the fact that another payment was made by cheque of the appellant drawn on his bankers in Alberta and sent by him by mail to the respondents at London.

It is probably not open to question that the respondents could not have sued on the draft in an Ontario Court, but as far as the cheque is concerned the course of dealing makes against the contention of Mr. Osler. The cheque was sent by the appellant by mail to the respondents at London, and was received by them there. We cannot shut our eyes as to what the ordinary course of business in such cases is. The cheque was accepted by the respondents and was then forwarded to the Bank upon which it was drawn, for payment.

There can be no doubt that if the respondents had delayed the presentation of the cheque, and the Bank had failed, the loss would have been theirs.