

still sue A for the amount? Or, is the debt extinct? Or again, can B recover against A and hold the money so recovered upon trust for C?

(b) pays B, in cash, part only of the amount due to him by A, and B accepts C's money in settlement of the whole amount so due, is the result the same as in case (a)?, or, can B sue A for the balance of the debt?

(c) offers B a negotiable instrument or a horse or a piece of freehold land, which B accepts in settlement of the amount due, is the result the same as in case (a)?

3. If, in any of the cases in 2, A can successfully resist B's claim, is it necessary that A should ratify C's act? Or, does B fail on the ground of his attempted fraud on C? Or again, does A win because he must be presumed to have accepted a gift?

4. In any of the cases in 2, has C any and what rights against A?

Let us deal with these points in order.

1. There is ample authority for stating that the answer to this question must be in the affirmative. Two cases only need receive particular attention.

In *Croft v. Lumley*,² (1857), Bramwell, B. (at page 706 of the report) observed: "If the party to whom money is offered does not agree to apply it according to the express will of the party offering it, he must refuse it, and stand upon the rights which the law gives him." This approves the judgment of Lord Campbell, C.J., in the same case.³

Again, in *Day v. McLea* (1889),⁴ the defendants had committed a breach of contract. On a claim being made by the plaintiff, the defendants sent them a cheque for a less amount than that claimed, stating that it was "in full of all demands."

(2) 6 H.L.C. 672.

(3) 5 E. & B. at page 680. Compare *Torrance v. Bank of British North America*, 1873, L.R. 5 P.C. 246; *Devonport v. Reg.* 1877, 3 A.C. 115; *James v. Young*, 1884, 27 C.D., at page 603. See the observations of Cave and Willis, J.J., in *Ackroyd v. Smithies*, 1885, 54 L.T. (N.S.) 130. Compare *Keith Prowse & Co. v. National Telephone Co.*, 1894, 2 Ch. at page 155.

(4) 22 Q.B.D. 610.