

NOVEMBER 9TH, 1915.

SHEARER v. REEDER.

Payment—Satisfaction of Obligation—Part Performance—Cheque Marked in Full—Endorsement and Cashing—Extinguishment of Obligation—Estoppel—Findings of Fact of Trial Judge—Mercantile Law Amendment Act, R.S.O. 1914 ch. 133, sec. 16.

Appeal by the defendant from the judgment of COATSWORTH, Jun. Co. C.J., in favour of the plaintiffs, in an action in the County Court of the County of York, brought to recover \$200, the balance of a deposit made by the plaintiffs upon a purchase from the defendant of an automobile.

The purchase-price was \$1,500; \$400 was paid in cash; and the balance was to be paid in instalments with interest. The contract was never carried out. The defendant returned \$200 of the \$400 paid, by a cheque which was marked on the back, "In final settlement of account and all demands, see letter of April 8, 1915, endorsement is accepted as such." The plaintiffs endorsed and cashed the cheque; and then sued for the remaining \$200. The learned Junior Judge found that the cheque was not expressly accepted in satisfaction of the defendant's obligation to repay the \$400.

The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, J.J.A.

J. J. Gray, for the appellant.

T. S. Elmore, for the plaintiffs, respondents.

MEREDITH, C.J.O., delivering judgment, said that the question upon the answer to which the right of the respondents to recover depended was, whether or not the cheque for \$200 which the appellant sent to them, and stated to be in full settlement of all claims, was, within the meaning of sec. 16 of the Mercantile Law Amendment Act, R.S.O. 1914 ch. 133, expressly accepted by the respondents in satisfaction of the appellant's obligation to repay the \$400 which he had received. The question was one of fact, and the finding of the trial Judge was that the cheque was not so accepted. That there was in fact no intention on the part of the respondents so to accept it was clear upon the evidence; but it was, no doubt, open upon it to find that, by their