

Correspondence

PAYMENT BY CHEQUE.

The Editor, CANADA LAW JOURNAL:

DEAR SIR,—Your note on payment by cheque, 47 C.L.J., p. 21, seems to imply that a cheque expressed to be "in full" of a debt may not be applied upon account, notice being given that it is only so accepted. In this connection the distinction between a debt and a tort seems important only as taking the latter out of the rule in *Cumber v. Ware*, 1 Str. 426, which, in any event is abrogated in Ontario by statute. In *Henderson v. Underwriters*, 65 L.T. 732, the cheque was given and accepted "in full," pursuant to an express agreement to that effect. This agreement was afterwards repudiated by the defendant and the repudiation accepted by the plaintiff. Of course it followed that the money paid under it must be returned. *Mason v. Johnston*, 20 Ont. App. 412, appears to be an express authority that a cheque payable to order, expressed to be "in full" of a debt may be retained and applied upon account, notice being given the debtor that it is only so accepted, and the balance demanded. If in error, kindly correct.

Yours truly,

SUBSCRIBER B.

REGINA, Jan. 18, 1911.

[If there is nothing in a case to warrant a plea of accord and satisfaction, except the circumstance that the debtor has sent his cheque marked "in full" which the creditor has retained and cashed, but notified the debtor he will not accept in full, we agree that that does not amount to accord and satisfaction and the creditor is entitled to sue for the balance. In addition to the cases referred to in our former note, we may mention another decision of the English Court of Appeal which seems to support this view, viz., *Miller v. Davies*, 68 L.T. Jour. 43. The fact that the cheque is made payable "to order" and has been indorsed by the creditor, according to *Mason v. Johnston* appears to make no difference. Our former note was an answer to an inquiry for cases subsequent to *Day v. McLea*.—EDITOR, C.L.J.]