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CONSIDERATION AND COMPOSITIONS WITH CREDITORS.

In the Law of Contract the doctrine of consideration often creates difficulties, and the application of this doctrine sometimes has strange results. Now we have had no satisfactory explanation of agreements of composition between debtors and their creditors. That this is so is recognized by high judicial authority for Lord Fitzgerald said in the well-known case of *Foakes v. Beer*¹: "I concur with my noble and learned friend that it would have been wiser and better if the resolution in *Pinnel's case*² had never been come to, and there had been no occasion for the long list of decisions supporting composition with a creditor on the rather artificial consideration of the mutual consent of other creditors."

Before discussing the cases which directly bear upon this question, we should do well to remind ourselves of the following two principles of English law:—

1. It is well settled that if A owes B £10 and B agrees (otherwise than by deed) to take £5 in money at the same time and place as the £10 are payable in settlement of his claim, then, in spite of the £5 having been paid B can still sue A for the balance.³ The House of Lords in *Foakes v. Beer*⁴ gave effect to this rule but with considerable reluctance. Lord Blackburn thought the rule originated in a mistake, or in a dictum, in *Pinnel's case*.⁵ "Communis error facit jus."

1. 1884, 9 A.C. 605, at page 630.

2. 1602, 5 Rep. 117a.

3. *Cumber v. Wane*, 1718. 1 Str. 426, though the actual decision in this case cannot now be supported; see Smith's Leading Cases, vol. I. p. 349; and Sir William Anson's Law of Contract, 12th edition, p. 104.

4. 1884, 9 A.C. 605.

5. 1602, 5 Rep. 117a. Cf. *Lynn v. Bruce*, 1784, 2 H. Bl. 211, 3 R.R. 381; *Underwood v. Underwood*, 1894, P. 204; and *Couldery v. Bartrum*, 1881, 19 C.D. 394, per Jessel, M.R.