

them 7s. in the pound, and at the time of such payment to the Plaintiff, promised to pay the residue of his debt, when he should be of ability so to do, which he was proved to have been before action brought. To meet this case, the Defendant produced a receipt signed by the Plaintiff for the composition of 7s. in the pound for his debt, which he acknowledged to be in full of all demands, and then insisted that this receipt was a discharge of the promise. A verdict having been found for the Defendant, on a motion for a new trial, *Knight vs. Sir Bull. N. P. 155*, was cited for the Defendant, where the creditor having accepted a composition, and signed a release to the Defendant, who in consideration thereof promised to pay him the entire debt, it was holden, that the release was a good defence to an *indebitatus assumpsit* for the original cause of action. But Lord Ellenborough, Ch. J. said, in that case the original contract was extinguished by the release; but it could not be pretended that a receipt of part only, though expressed to be in full of all demands, must have the same operation as a release; it was impossible to contend that an acceptance of £17 10, was an extinguishment of a debt of £50. He added that there must be some consideration for the relinquishment of the residue, something collateral, to shew a possibility of benefit to the party relinquishing his further claim, otherwise the agreement was *nudum pactum*. But the mere promise to pay the rest when of ability, put the Plaintiff in no better condition than he was in before.

An agreement between a debtor and his creditors, that they will accept a composition in satisfaction of their respective debts, to be paid in a reasonable time, cannot be pleaded in an action brought by one of the creditors to recover his whole debt.---2 T. R. 24. *Heath & Crookshanks*.

In *indebitatus assumpsit* for £15, if the Defendant plead that he gave the Plaintiff a Promissory Note for £5, it is not good. Plaintiff's agreement is not sufficient, it must appear to the Court that he had a reasonable satisfaction.---*Camber vs. Wane*, P. 7. G. Strange, 4th.

Payment of a lesser sum on the day, in satisfaction of a greater, cannot be any satisfaction for the whole, because it appears to the Judges that by no possibility a lesser sum can be a satisfaction to the Plaintiff's for a greater sum.---*Pumf's Case*, 5. Rep. 117.

Authorities relative to Appellants' right to recover Interest.

....And the said rate of Interest shall be allowed and recovered, in all cases where it is the agreement of the parties that interest shall be paid.Prov. Ordce. 17 Geo. III. c. 5. s. 3.

As to the definition of the word *agreement* it seems to me that *aggrementum* is a word compounded of two words, viz. of *aggregatio* and *mentium*, so that *aggrementum* is *aggregatio mentium in re aliqua facta vel facienda*. And so by the contraction of the two words and by the short pronunciation of them they are made one word, viz. *aggrementum*, which is no other than an union, collection, copulation, and conjunction of two or more minds in any thing done or to be done—*Flow. Com.* 17. a.

Luttrell 13 Nov. 1811
R. Mudd
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