

upon an account stated. The defendant said that the plaintiff having taken possession of the defendant's property some of which he sold, arrangements had been made with different creditors to receive a composition for their respective debts. D. and H., being creditors of the defendant to the amount of £60 agreed to take £30 in discharge of their debt, upon the express condition, on the part of the plaintiff, that he, taking the residue of the property, would also discharge the defendant. D had received £20 part of that sum from the plaintiff, and another creditor had agreed to take 10s. in the pound but without any communication with the plaintiff, and a warrant of attorney which had been given by the defendant to the plaintiff as a security for his debt had been delivered up to the defendant. Abbott, L.C.J. (afterwards Lord Tenterden) held that if the plaintiff had, by his undertaking to discharge the defendant induced any other creditor to accept a composition and discharge the defendant from further liability he could not afterwards enforce his claim, since it would be a fraud upon that creditor.¹⁹

At length, in 1831 the case of *Good v. Cheesman*^{19a} was decided, and has since been treated as the leading authority on the subject. It appeared that four of the defendant's creditors of whom the plaintiff was one signed the following memorandum which was not under seal:—"Whereas William Cheesman, of Portsea, brewer, is indebted to us for goods sold and delivered and being unable to make an immediate payment thereof we have agreed to accept payment of the same by his covenanting and agreeing to pay to a trustee of our nomination one third of his annual income, and executing a warrant of attorney as a collateral security until payment thereof. As witness our hands this 31st of October, 1829." The defendant

19. Where the defendant was liable to the plaintiff under a covenant, and several of the defendant's creditors including the plaintiff, agreed by parole to execute a composition deed, it was held that the plaintiff could still sue on the covenant. No reasons are given. *Lowe v. Egington*, 1819, 7 Price 604.

19a. 2 B. & Ad. 328, 36 R.R. 574.