

his determination of the case was upon a question of insufficient pleading. Some eminent lawyers, in fact, take issue with the great weight of authority, and deny that it was ever the intention of Lord Coke to establish such law. Among these is Chief Justice Woods, of the Supreme Court of Mississippi, who, in *Clayton v. Clark*, 74 Miss. 499, declares: 'That the question was not only not decided, but it was impossible that it should have been.' And Lord Blackburn in his most entertaining discussion of the origin of this rule, in the case of *Foakes v. Beer*, appears to believe that Coke was mistaken as to fact as well as law. He says: 'What principally weighs with me in thinking that Lord Cole made a mistake of fact is my conviction that all men of business, whether merchants or tradesmen, do, every day, recognize and act on the ground that prompt payment of a part of their demand may be more beneficial to them than it would be to insist on their rights and enforce payment of the whole. Even where the debtor is perfectly solvent and sure to pay at last, this is often so. Where the credit of the debtor is doubtful, it must be more so.'

But however this may be, it must be admitted that whether as mere dictum or not, the rule is laid down in the *Pinnel Case*, as a reading of it will shew, and while exceptions have been announced and adverse criticism from bench and bar passed, it has for these three hundred years or more, obtained as the rule of the common law, and been recognized as such by courts of highest dignity. And *Cumber v. Wane*, a later case, which shares with Pinnel's the distinction of having originated this rule, again announces the doctrine clearly, citing the Coke opinion. In this latter case the defendant pleads that he had given a note for five pounds in satisfaction of a note for fifteen pounds, and Lord Chief Justice Pratt in his opinion says: 'Even the actual payment of five pounds would not do because it is a less sum.' In *Fitch v. Sutton*, Lord Ellenborough again sustains the doctrine, for he says: 'There must be some consideration for the relinquishment of the residue, something collateral to shew the possibility of benefit to the party relinquishing his further claim otherwise the agreement is nudum pactum. . . . The authority of *Cumber v. Wane*, is directly supported by Pinnel's case, which never appears to have been questioned.' And in the United States as well the doctrine has to this day obtained, being upheld by the Supreme Court in the cases of *Fire Association v. Wickham* and *United States v. Bostwick*, as