

agreement on the part of the defendant is proved by the plaintiffs."^{17a} The words in italics are most important, for they contain the first reference to the facts that consideration is received by each creditor from the others and that this consideration supports the agreement of composition. This case, however, was not followed in *Cranley v. Hillary*, 1813,¹⁸ where the defendant pleaded that the plaintiff had agreed in writing (not under seal) with the defendant and the rest of his creditors that he would take a composition of 8s. in the pound to be secured by promissory notes to be given by the defendant, the same being guaranteed by F. & Co., and that the defendant should assign to the creditors certain debts, upon which they should execute a general release. The agreement was executed by the defendant, and all the other creditors, except the plaintiff, received their composition, and executed a general release. The plaintiff might have received his promissory notes if he had applied for them, but there was no evidence that the defendant had given or tendered them to the plaintiff or that the latter had ever applied for them. The plaintiff sued on a bill of exchange which had been accepted by the defendant before the above agreement was entered into, and judgment was given in his favour. Lord Ellenborough said: "The rule is, that the person to be discharged is bound to do the act, which is to discharge him, and not the other party." Dampier, J., quoted Littleton, S. 340.

In *Wood v. Roberts*, 1818^{18a} the plaintiff sued for a balance

17a. Cf. *Garrard v. Woolner*, 1832, 8 Bing. 258.

18. 2 M. & S. 120; cf. *Reay v. White*, 1833, 1 Cr. & M. 748, where, however, the plaintiffs failed for it was held that tender had been waived. Vaughan, B., said, "The defendants have done all that the circumstances imposed upon them," and relied on *Jones v. Barkley* 1781, 2 Doug. 684. The insistence upon the exact performance of the contract on the part of the debtor and the consequent difficulties in pleading may be seen in *Soward v. Palmer*, 1818, 8 Taunt. 277; 19 R.R. 515; *Shipton v. Casson*, 1826, 5 B. & C. 378; *Cooper v. Phillips*, 1834, 5 Tyr. 170; *Deacon v. Stodhart*, 1839, 9 C. & P. 686; *Rosling v. Muggeridge*, 1846, 16 M. & W. 181; *Evans v. Powis*, 1847, 1 Exch. 601; 74 R.R. 777; *Hazard v. Mare*, 1861, 6 H. & N. 434. Even equity required strict performance in Lord Hardwicke's time, *Ex. p. Bennet*, 1743, 2 Atk. 527.

18a. 2 Stark. 417.