

unaccepted. It appeared that the plaintiff had agreed that if the defendant's father would pay him £9 he would accept it in satisfaction of the whole debt; and that this sum had accordingly been paid by the father. Abbott, Ch.J., remarked:—

“If the father did pay the smaller sum in satisfaction of this debt, it is a bar to the plaintiff's now recovering against the son; because by suing the son *he commits a fraud on the father*, whom he induced to advance his money on the faith of such advance being a discharge of his son from further liability.” A verdict was given for the defendant.

A case decided in 1840, *Thurman v. Wild*,¹⁵ is often quoted in this connection, but it is of no assistance to us, for Lord Denman, C.J., who gave the judgment of the Court, said that the stranger in that case must be taken upon the pleadings to have been a co-trespasser with the defendants, and held, on the authority of *Hillman v. Uncles* (1693),¹⁶ that an accord and satisfaction between the plaintiff in trespass and one of two trespassers not sued, might be pleaded in bar by the other. In other words, the plaintiff had failed to make out that the agreement pleaded by the defendants was made by him with a stranger.

In *Alexander v Strong* (1842),¹⁷ the plaintiff, acceptor of a bill of exchange, on the day it fell due, sent a person to the defendant, who held it, to pay the amount of the bill and bring it back. The defendant received the money and gave a receipt for it. On being pressed for the bill, the defendant sent to the plaintiff a paper signed by one G., acknowledging the receipt from the defendant of the amount of the bill, and undertaking to bear the plaintiff harmless for the amount of the bill. The plaintiff kept this guarantee, but sued the defendant for money had and received. It was held that the plaintiff's right of action vested on the defendant's refusal to repay the money or give up the bill; and, therefore, that the receipt by the plaintiff of

(15) 11 Ad. & E. 453.

(16) Skinner, 391.

(17) 9 M. & W. 733.