

FOAKES v. BEER—STARE DECISIS.

A NOTABLE example of the uncertainty of the best known of our legal propositions is furnished by the recent case in the House of Lords—*Foakes v. Beer*, 54 L. J. N. S. Q. B. 130. We had thought that if there was any unimpeachable proposition of law it was “that payment of a lesser sum, on the day, in satisfaction of a greater, cannot be any satisfaction for the whole.” This was laid down in *Pinnel’s Case*, Co. Lit., 212 b., in 1602; the reason given being, “because it appears to the judges that by no possibility a lesser sum can be a satisfaction to the plaintiff for a greater sum.”

We were aware that a very slight appearance of benefit to the creditor—for instance, payment of a smaller amount the day before the due date; a payment of a smaller amount at a place other than that agreed upon; or the making and delivery of a negotiable note—took the case out of the rule, but the rule itself seemed beyond controversy. After 280 years, however, it has reached the House of Lords, and it has had a narrow escape. Their Lordships seem to agree that Sir Edward Coke was wrong, but the majority thought that although the doctrine “may have been criticized as questionable in principle by some persons whose opinions are entitled to respect, it has never been judicially overruled; on the contrary, it has always, since the sixteenth century, been accepted as law.” “If so, I cannot think (said the Lord Chancellor) that your Lordships would do right if you were now to reverse as erroneous a judgment of the Court of Appeal proceeding upon a doctrine which has been accepted as part of the law of England for 280 years.”

Lord Blackburn was of opinion that the point was open for re-consideration, but in deference to the other judges