

"For the principle on which such an agreement is held to operate as an answer to an action by a creditor who has come into it, is, that there has been a substitution of a new agreement, by mutual consent, and on good consideration in the stead or place of the old contract."²⁴ This may be true but we are not told what the consideration consists of or who gives it.

In *Reay v. Richardson*, 1835,^{24a} the plea of the defendant failed for the following reason which was given by Bolland, B.: "It appears on the plea, that there were other creditors, who it was intended should become parties to the agreement; but the plea does not state that they did so. The consideration for the agreement, therefore, failed, and neither of the parties are bound." Lord Abinger, C.B., makes the following interesting statements: "The consideration for the plaintiffs entering into such an agreement would be the benefit derived to the defendant from his being exonerated from the claims of the general body of his creditors; but if that object is not obtained, why are the plaintiffs and Sir W. H. Richardson to be bound to take the composition? If, indeed, the main object of the agreement has been obtained, by the principal part of the creditors assenting to it, but some one creditor has refused his assent, it may be binding upon the others. Upon that, however, I offer no opinion, though I have always considered that there ought to be evidence of the assent of all the creditors to the arrangement."

In *Norman v. Thompson*, 1850,²⁵ Pollock, C.B., said: "The first question is simply whether an agreement between less than

24. Nevertheless, the agreement in this case was held void under 13 Eliz. C. 20, which prohibits "All chargings of any benefice with cure, with any pension or any profit out of the same, to be yielded or taken;" and it was unenforceable, because it was not signed by the defendant as required by the Statute of Frauds.

Cf. *Thomas v. Courtney*, 1817, 1 B. & Ald. 1; as to the effect on the original contract.

24a. 2 C.M. & R. 422. The defendant set up a parole agreement. Cf. *Ex p. Bateson*, 1840, 1 Mont., D. & De G., 289, Sir G. Rose's judgment.

25. 4 Exch. 755, 80 R.R. 762. The jury had found that there was a verbal agreement to accept 10s. in the pound by instalments. In *Brown v. Dakeyne*, 1847, 11 Jur. 39 the question was whether the plea of composition with creditors had been proved; and the judges held that it had not. See the judgment of Lord Denman.