

opinion that it was a nudum pactum in its creation. . . . This agreement is not binding in law: the plaintiff is always entitled to the whole demand; and therefore as this agreement has not been followed up by an actual acceptance, which is negatived by the record, it was not obligatory." Buller, J., said: "It has been said by the defendant's counsel that in effect by this agreement the debt was ascertained, a fund was provided for the payment of it, and all the creditors were bound to forbear. If the fact had been so, that might have been a good plea; but the reverse appears by the defendant's plea. Secondly, no fund is appropriated for the payment of the debt. If the debtor had assigned over all his effects to a trustee, in order to make an equal distribution among all his creditors, that would have been a good consideration in law for the promise; but no such fact appears in this case. Thirdly, it was said that all the creditors were bound by this agreement to forbear; but that is not stated by the plea. It is only alleged that they agreed to take a certain proportion; but that is a nudum pactum unless they had afterwards accepted it."

In *Cockshott v. Bennett*,<sup>8</sup> decided in 1788, the defendants, being considerably indebted to the plaintiffs, and to several other creditors, and being insolvent, assigned over all their effects in trust to pay 11s. in the pound to their creditors, to which they all consented and signed the deed; but the plaintiffs did not sign until the defendants had given them a note for the remaining 9s. in the pound. The defendants made a subsequent promise to pay it. The plaintiffs sued them upon it, but it appeared that the rest of the creditors would not have signed the deed, unless the plaintiffs did so likewise, and so judgment was given for the defendants on the ground that the note was fraudulently obtained. Ashhurst, J., in the course of his judgment makes this interesting statement: "The debt was annihilated by the deed of composition." It will be observed at once that the plaintiffs did not sue upon their original contract, and that neither the validity nor the effect of the

8. 2 T.R. 763, 1 R.R. 617.