595, requires some short notice, because, though the decision has immediate reference to a claim for compensation under the English Public Health Act, 1875, the rule it lays down might probably apply to applications for compensation under the arbitration clauses of many of our own acts. The decision lays down that where a claim for compensation is made against a local authority under the said Act for damage caused by them in the exercise of their powers, and the local authority *bona fide* disputes their liability to make compensation at all under the Act, the arbitrator, nevertheless, has jurisdiction to hold his arbitration and make his award as to the fact of damage and the amount of compensation, and the proper course of the local authority is to raise the question of liability in their defence to an action upon the award. Lord Fitzgerald says at p. 603: "In the execution of his duties it is difficult to see how the arbitrators can avoid inquiring whether the acts complained of were matters done in the exercise of the powers of the Act, and as to which the claimant was not himself in default, so as to limit the scope of his assessment of compensation; but his decision, if any, as to the liability of the defendants in point of law would not be binding and would be inoperative. If the damage complained of has been occasioned apparently by reason of the exercise of the powers of the Act, the arbitrator proceeds to assess the amount of compensation limited to such damages, and leaving it open to the defendants, if they think fit, to contest their liability to the amount awarded on any grounds that may be open to them."

Contract by creditor to take less than sum due—Nudum pactum.

In the next case, *Foakes* v. *Beer*, p. 605, the House of Lords proceed upon a doctrine, which Lord Selborne states, at p. 610, "has been accepted as part of the law of England for 280 years." "The doctrine," he goes on to say, "as stated in *Pinnel's* case, 5 Rep. 117, a. is 'that payment of a lesser sum on the day (it would of course be the same after the day), in satisfaction of a greater, cannot be any satisfaction for the whole, because it appears to the judges that by no possibility a lesser sum can be a satisfaction to the plaintiff for a greater sum.'" By the case before the House a judgment creditor entered into an agreement (in writing, but not under seal) with the judgment debtor, that in consideration of the debtor paying down part of the judgment debt and costs, and on condition of his paying to the creditor or his nominee the residue by instalments, the creditor would not take any proceedings on the judgment. In accordance with the agreement the debtor paid the whole amount of the judgment, but the judgment creditor nevertheless took steps to enforce payment of interest upon the judgment, and the Lords held, affirming the decision of the Court of Appeal, that the agreement was *nudum pactum*, being without consideration, and the creditor was entitled to enforce payment of the interest. Lord Blackburn, in a lengthy judgment, points out that the doctrine in *Pinnel's* case is only a *dictum*, and though he admits it has been treated as good law by great judges, yet he says, p. 617: "Notwithstanding the very high authority of Lord Coke, I think it is not the fact that to accept prompt payment of a part only of a liquidated demand, can never be more beneficial than to insist on payment of the whole. And if it be not the fact, it cannot be apparent to the judges." At the end of his judgment he says: "What principally weighs with me in thinking that Lord Coke made a mistake of fact is my conviction that all men of business, whether merchants or tradesmen, do every day recognize and act on the ground that prompt payment of a part of their demand