

satisfaction or a release but it is a new agreement between the creditor and debtor, such as might very well be entered into on a valid consideration. It was not necessary in this particular case that there should be an actual assignment or execution of a warrant of attorney, if it only rested with the plaintiff and the other creditors that the contract should be carried into effect, and the defendant was always ready to do his part, it is the same as if he had actually executed an assignment or warrant of attorney." This case, therefore, is different from *Heathcote v. Crookshanks*.²¹ In the course of counsel's argument, Parke, J., had said: "It did not appear by the pleadings in that case (that is, *Heathcote v. Crookshanks*) that the creditors agreed to forbear. Here it may be inferred that they did."

It is submitted, that, quite apart from any contract there may have been among the creditors themselves, there was a sufficient consideration moving from the defendant for the plaintiff's promise to forgive him a part of his full claim, namely, the defendant's promise to do three things, that is, (a) to enter into a covenant; (b) to pay certain moneys to a trustee to be nominated by creditors; and (c) to execute a warrant of attorney. The judges were clearly not inclined to follow *Heathcote v. Crookshanks*, but the authority of that case was not completely shattered until 1884, when Lord Blackburn referred to it in *Foakes v. Beer*²² and said: "That decision goes entirely on the ground that accord without satisfaction is not a plea. The plea there pleaded would, I think, now be held perfectly good, see *Norman v. Thompson*,"—a case to be discussed presently.

The principle involved in *Good v. Cheesman* was adopted by Tindal, C.J., who, in giving the considered judgment of the Court of Common Pleas in *Alchin v. Hopkins, Clerk*,²³ said:

21. 1787, 2 T.R. 24.

22. 9 A.C. 605.

23. 1834. 1 Bing. N.C. 99, 41 R.R. 574. The agreement was not under seal.