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The common law has given this country the foundation of our laws, sometimes our courts have felt disposed to depart from the basic rules of the common law and at other times they have submitted to them. The old English judiciary was composed of very capable men with magnificent legal training and we should feel fortunate in having such powerful forerunners for our legal system, however, too many times the tendency has been to worship dictum written in the "Golden Calf", the common law. It is regrettable to admit that great courts of this country composed of men that are fully the equal of English pioneers, have followed blindly moldy precedents established centuries ago which have become hallowed by misuse of the doctrine of *stare decisis.* However the aged precedent that is to be considered in this article is one that has not ben followed blindly by the American courts, but on the contrary has been criticized vehemently and condemned flagrantly in nearly every jurisdiction in the country and yet is still the law. It is the case of *Pinnel v. Cole,* 5 *Coke* 117, decided in 1602, which is popularly known as the "Rule in Pinnel's Case".

The rule in Pinnel's Case as stated by Lord Coke, "But when the whole sum is due by no intendment the acceptance of a parcel can be a satisfaction to the plaintiff."

Pinnel brought an action in debt on a bond against Cole. The defendant pleaded that at the instance of the plaintiff, he paid before maturity a lesser sum than due and the plaintiff accepted such as a full satisfaction. The court held that the plaintiff should have judgment for the pleading was insufficient, for the defendant did not plead the payment of the amount in full satisfaction of the debt to the plaintiff.

Lord Coke really decided this case on the pleadings and when he stated for part payment the learned judge was really handing down dicta. However, this case and its dicta is followed by nearly every court in the United States as authority for the proposition that part payment of a debt is never full satisfaction.

This is mentioned to impress the reader that the case is not so potential as it has been credited to be. The question to be decided was one of pleading only and the case could have been disposed of unceremoniously without any dicta that the court took upon itself to expound.

Lord Coke also decided that agreements under seal would be a full satisfaction, also payment at a different place, the gift of a horse or hawk or robe would also be full satisfaction. In other words, if there was anything that took the color of additional consideration, the rule was entirely circumvented. This has been the method used by the well advised to take the part payment of a debt out of the operation of the general rule as decided by Pinnel's Case. Merchants and lawyers have by habit acquired the practice of alleging an additional consideration in a receipt for a part payment of a debt.

In the *case of Foakes v. Beer,* before the 9 *App. Cases* 605, Lord Blackburn before the House of Lords stated, "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 may be more beneficial to them than it would be to insist on their rights and enforce payment of the whole. Even where the debtor is perfectly solvent and is sure to pay the rest this often is so. Where the credit of the of the debtor is doubtful it must be more so." In the long period of over a century there had been no cases where the question had been raised which would call for the application of the Rule in Pinnel's Case that a part payment was not a satisfaction of a debt. This astounded Lord Blackburn.

The most asounding feature of the rule is that nearly every court in the country at some time or another has criticized it and disapproved the rule but did not see fit to disregard and overrule it. A few citations to criticisms of the rule by able courts will suffice, *Dreyfus v. Roberts* (75 Ark: 354), *Mitchell v. Wheaton* (46 Conn. 315), *Engbretson v. Seiberling* (122 Iowa 522), *Langdon v. Langdon* (4 Gray (Mass.) 186) and *Johnson v. Brannan* (5 N. Y. (John) 186) are a few courts that condemned the rule under consideration. The rule has never been popular and the fact that it has survived its unpopularity is the most remarkable feature of

it. A learned discussion of the rule and the attitude of most courts toward it is exemplified by an able decision of the Supreme Court of Ohio in *Harper v. Gresham,* 20 Ohio 105. The opinion states, "The history of judicial decisions on the subject has shown a constant effort to escape from its absurdity and injustice..... We see, then, that the payment of a less sum than is due the day before the debt falls due will discharge it; payment at another place than is stipulated will do so; the delivery of a collateral article of any value will do so; the acceptance of the debtor's note with security, the note of a third person, or even the negotiable note of the debtor himself will do so: and yet the payment of as much money in hand as is called for by such note will have no such effect although it is demonstrable that the utmost that the creditor can get from such a note cannot exceed in amount that which he gets in hand in the other case without trouble, delay or expense. It may seem to some persons, not having a great veneration for these institutions of antiquity for which no reason can be given, that a rule so effectually undermined and having neither rhyme nor reason to support it, ought to be at once overruled, and the whole matter placed upon the footing of reason and common sense, especially as the exigencies of modern commerce frequently compel the most deserving men, with the aid of friends, to compromise their debts for less than the amount due, an operation mutually beneficial to both debtor and creditor, as the creditor gets a part, where otherwise he would lose the whole, and the debtor is left free to commence again with the hope of better success. These considerations will necessarily arise whenever it becomes necessary to decide the general question. In this case we aspire to nothing higher than to follow in the footsteps of the sages of the law, and hold this one of the cases 'taken out of the rule' because the money by the original obligation was payable in Ohio, whereas the lesser sum of money was paid at another place, to-wit: in Arkansas."

The Rule in Pinnel's case is an absurdity. Why may one accept a cow worth $50 as full satisfaction for a note of $5,000 and be bound thereby and yet not be legally bound by his agreement to accept $4,999.99, and his actual acceptance of it in full satisfaction of a note for $5,000? There is no logical reason in this age of large scale business why a creditor can not accept a lesser

amount as full satisfaction for a debt when he has some reason for accepting it as such. A rule of law that condemns and declares that under no circumstances, however beneficial to the creditor, can the payment of a lesser sum be a full satisfaction of a debt due him is irrational and unsupported by sound reason and nearly every court in the union has wasted no words in declaring the rule unsound, and have followed it with the greatest reluctance and antipathy. The rule is strictly technical and finds itself based on the theory that there is no consideration for the payment of a lesser sum and that such is *nudum pactum*. The courts do not inquire into the sufficiency of the consideration when they wish to overthrow the rule and bring some particular case outside of the rule. Yet we can not quarrel with the courts for adhering to the rule because they make the law, however it must be remembered that they have quarreled with the rule for three centuries and still they follow it.

Let us consider the methods of obliterating the rule. Two courts by decisions totally exploded the rule. Mississippi blazed the trail and boldly refused to recognize it in the case of *Clayton v. Clark* (24 Miss. 499). Judge Wood of the Supreme Court of Mississippi said in the opinion, "There Pinnel pleaded payment of a lesser sum before the date of maturity of the greater sum, named in the bond and accepted by the creditor in full satisfaction and he lost, unhappy wretch that he was, born two or three centuries too soon and not knowing the difference between a legal tweedledee and a legal tweedledum because he pleaded that he paid part of a greater original sum and that the plaintiff accepted it in full satisfaction and did not plead that he paid it in full satisfaction." No stronger ridicule could come from a court of last resort and no court ever lost less time reducing an absurdity to a nonentity so effectively. Someone said that the law changes every generation and if this is true this rule has lived fifteen generations too long. New Hampshire followed the example set by the Mississippi Court and in the case of *Frye v. Hubbell* (68 Atl. 325, 334) denounced the rule of Pinnel's Case. These two states are the only states that have refused to follow the rule by force of Judicial decree.

Several states have struck at the root of the evil of the rule more decisively than the states of New Hampshire and Missis-

sippi by either expressly modifying the rule or entirely abrogating it by statute, Alabama Code (1876(Chapter 3039, Cal. Civ. Code (1899) Chapter 1524, Ga.Code (1895) Chapter 3735, Me. Rev. St. (1871) 82#38, N. C. Code (1883) #574, S. D. Civ. Code #1180, Tenn. Code #3789, Va. Code (1887) #2858, and Ontario Rev. St. c44#53. A survey of the Virginia Code will give the reader a view of the general form of these statutes cited above. The statute prescribes that part performance of an obligation or undertaking either before or after the breach, when expressly accepted by the creditor in satisfaction and rendered in pursuance of the agreement for that purpose, although without any new consideration, will extinguish such obligation, promise or undertaking. Under this statute the burden of proof is upon the debtor to show that the sum of money which he paid in part performance of his obligation was "expressedly accepted by his creditor in satisfaction, and rendered in pursuance of an aggreement for that purpose".

The remainder of the states have followed the rule in Pinnel's Case and have refused to depart from this dictum. The cases that support this rule will be cited in the footnote at the end of this article. A hurried glance at the number of states following this antiquated rule shows that they predominate over the states who have abrogated it by decision or statute.

The best reason for the rule in Pinnel's Case is that the creditors would be continually harassed by unscrupulous dead-beats who habitually seek to diminish their liabilities by offering to settle at a lesser sum than the debt due. Such an argument appears shallow because such people are in their nature litigous and above all probably the creditor will settle to eliminate the time and trouble of expensive court procedure. Again, why not let a creditor accept a lesser amount in full satisfaction of debt without added consideration if he sees fit? Why should creditors be made wards of the court? If a creditor wishes to make a bad bargain why inquire into the consideration and invoke a rule of over three centuries standing to declare the settlement *nudum pactum?*

The courts are well settled, except in the states that have abrogated the rule, that the giving of a receipt in full does not in any way affect the rule that a payment of a less sum in the discharge of a greater sum presently due is not a satisfaction thereof, al-

though accepted as such, as the element of consideration is lacking and it is immaterial that the receipt was given with full knowledge of all the facts and that there was semblance of fraud (11 Pac. 421).

There has much been said concerning the exceptions to the Rule in Pinnel's Case. There are numerous exceptions to the rule, it is true, and many of these were made exceptions on no logic other than the fact that the leading case is bad law. Before taking up these exceptions let us pause a moment to consider the effect of reluctance of the courts to follow and the readiness of the courts to condemn the rule upon the everyday practice of law. Lawyers will have a natural tendency to appeal to cases involving the rule whenever the personnel of tbe bench hsa been changed, with the hope that the new members will be fearless enough to depart from the rule. The many loopholes that the courts have inconsistently used to evade the rule give the lawyer faint hope that he can possibly by ingenuity make his case analagous. It leaves the law in a turmoil.

The rule as we have been considering it only applies to liquidated debts. There is no conflict that a lesser sum may be accepted before due of the whole sum for the reason that the money may be worth more then to the creditor than after the debt is due. It is universally accepted that a part payment, taken as a compromise between an insolvent debtor and his creditor, is full satisfaction and accord. The great weight of authority is with the rule that an acceptance of a lesser sum is full satisfaction if additional security is given for the debt due.

Payment at a different place than agreed upon *(Harper v. Graham,* 20 Ohio 105) makes the payment of a lesser amount full satisfaction for the whole debt, if the debtor was inconvenienced or the creditor benefited. Payment by a third person of a sum less than the amount due, with the understanding that it will be a full satisfaction for the whole debt and the creditor cannot recover the balance *Clark v. Abbott,* (53 Minn. 88). The reason for this last rule being that there is a new consideration from a third party and the general rule does not apply. This rule does not include payments by an agent.

The abandonment or waiver of some right or defense is sufficient consideration and is full satisfaction and accord. An ex-

ample of this would be a waiver of a defense and pay costs, whether liquidated or not (35 A. 56).

The most prevalent exception to the rule is the composition of creditors. The rule than an acceptance of a lesser sum is not full accord and satisfaction of a greater sum does not apply in an agreement of composition of creditors and the debtor. This is a valid accord and satisfaction *(Way v. Langley,* 15 Ohio St. 392) and *Sage v. Valentine,* 23 Minn. 102. The reason for this rule is that the agreement of each creditor with the other creditors creates a valid consideration which takes it out of the general rule.

There are many more exceptions that time and space do not permit to be reviewed. However there is one more exception that is very effective in destroying the operation of the general rule. It is estimated that in over ninety per cent of the business transacted in 1927 payment was made by checks and drafts. As a result of this fact the last exception that will be taken up is very important. The rule is that whenever a claim is in dispute and the creditor receives a check or draft from the debtor and uses it, then there is full satisfaction if the dispute were of such a nature that the creditor had notice, citing (33 LRANS 852). It does not matter if the creditor gives notice that he refuses to accept the check or draft as full payment, if he uses it, then it is full satisfaction of the claim *(Seed Co. v. Conger,* 32 LRANS 380). If the creditor does not want to accept the check in full payment he should return it.

The rule has been qualified and evaded from the shallowest of reasoning and the only way the courts and bar can be honest with themselves is to entirely abrogate it. Prompt legislation from the states is he only solution.

The following courts have followed the rule in Pinnel's Case:
Federal, Missouri Electric Co. v. Hamilton Co. (165 Fed. 283).
Arizona, Fairfield v. Corbett (215 Pac. 510).
Arkansas, Pope v. Tunstall (2 Ark. 209).
Coorado, N. Y. Life v. MacDonald (160 Pac. 193).
Connecticut, Warren v. Skinner (20 Conn. 559).
Delaware, Woods v. Bangs (48 A. 189).
Florida, Jordy v. Maxwell (56 Sou. 946).
Illinois, Bostron v. Gibson (111 Ill. App. 457).
Indiana, Longworth v. Higham (89 Ind. 352).

Iowa, Works v. Hershey (35 Iowa 340).
Kansas, Lantry v. Atchison etc. R. R. (172 Pac. 527).
Kentucky, Cutter v. Reynolds (47 Ky. 599).
Maryland, Booth v. Campbell (15 Md. 569).
Massachusetts, Grinnel v. Spink (128 Mass. 25).
Michigan, Upton v. Dennis (94 N. W. 728).
Minnesota, Hoidale v. Wood (100 N. W. 1100).
Missouri, Chaimberland v. Smith (85 S. W. 645).
Nebraska, Sheibley v. Dickson County (85 N. W. 399).
New Jersey, Chamber v. United Fire Ins. Co. (33 A. 283).
New Mexico, Armigo v. Obeytia (25 Pac. 777).
New York, Seymour v. Minturn (8 Am. Dec. 380).
North Dakota, Webster v. MacLaren (19 N. D. 751).
Ohio, Toledo v. Sanwald (7 O. C. D. 116).
Pennsylvania, Holly Water v. Borough (10 Pa. Sup. Ct. 162).
Rhode Island, Rose v. Daniels (8 R. I. 381).
South Carolina, Parker v. Mayes (67 S. E. 559).
Texas, Bowdon v. Robinson (23 S. W. 816).
Utah, Smoot v. Checketts (125 Pac. 412).
Washington, Plymouth etc. Co. v. West Coast Co. (238 Pac. 25).
West Virginia, Nixon v. Kitty (66 S. E. 500).
Wisconsin, Prairie Co. v. Tuder (90 N. W. 1085).