

Foakes v Beer

(1884) 9 App Cas 605

Chapter 5 (page 221)

Relevant facts

On 11 August 1875, Julia Beer obtained judgment in the Court of Exchequer against John Foakes in the amount of £2,090 and 19 schillings for debt and costs in an action she had brought against him. Pursuant to the then applicable legislation, Beer was also entitled to interest on the judgment debt until it was satisfied. The interest was deemed to be part of the judgment debt.

On 21 December 1876, Beer and Foakes entered into a written agreement whereby Beer agreed to give Foakes time to pay the £2,090 and 19 schillings and undertook not to 'take any proceedings whatever on the said judgment'. Foakes' consideration for the agreement was stated to be payment of £500 in partial satisfaction of the judgment debt. The agreement also provided that half yearly instalments were to be paid by Foakes 'until the whole of the said sum of £2,090 and 19s shall have been fully paid and satisfied'. The agreement did not specifically address the issue of the interest.

Foakes made the instalment payments in accordance with the agreement to a total of £2,090 and 19 schillings. However, he refused to pay interest. On 1 July 1882, Beer sought to issue execution against Foakes for the interest. Foakes insisted that Beer could not sue for payment of the interest because she had promised not to enforce the debt, and the interest was part of the judgement debt. After various decisions by lower courts, the Court of Appeal decided in favour of Beer and ordered Foakes to pay her the interest owed under the legislation. Foakes appealed to the House of Lords.

Legal issue

Was part payment of the debt in accordance with the terms of the agreement dated 21 December 1876 consideration by Foakes for Beer's promise not to enforce the judgment debt?

Decision

On 16 May 1884, the House of Lords (Earl of Selborne LC and Lords Blackburn, Watson and Fitzgerald) applied the decision in *Pinnel's Case* (1602) 5 Co Rep 117 and decided that the agreement of 21 December 1876 was not legally enforceable. Because the interest payable under the relevant legislation formed part of the judgment debt, Foakes had paid an amount less than the debt owed. In the absence of any consideration by Foakes for Beer's promise not to enforce the judgment debt if Foakes repaid the £2,090 and 19s, it was not a legally binding agreement.

According to the Lord Chancellor, the Earl of Selborne:

If the question be, as in the actual state of the law I think it is, whether consideration is or is not given in a case of this kind by the debtor who pays down part of the debt presently due from him, for a promise by the creditor to relinquish, after certain further payments on account, the residue of the debt, I cannot say that I think consideration is given, in the sense in which I have always understood that word as used in our law. It might be, and indeed I think it would be, an improvement in our law, if a release or acquittance of the whole debt on payment of any sum which the creditor might be content to receive by way of accord and satisfaction, though less than the whole, were held to be generally binding, though not under seal; nor should I be unwilling to see equal force given to a prospective agreement like the present, in writing, though not under seal; but I think it impossible, without refinements which practically alter the sense of the word, to treat such a release or acquittance as supported by any new consideration proceeding from the debtor.

After acknowledging that there may be circumstances in which the manner in which the debt is repaid (such as payment in the form of a negotiable instrument) would constitute some new consideration, the Lord Chancellor continued:

What is called 'any benefit, or even any legal possibility of benefit,' ... is not, as I conceive, that sort of benefit which a creditor may derive from getting payment of part of the money due to him from a debtor who might otherwise keep him at arm's length, or possibly become insolvent, but is some independent benefit, actual or contingent, of a kind which in law might be a good and valuable consideration for any other sort of agreement not under seal.

Lords Blackburn and Fitzgerald expressed reservations about the decision in Pinnel's Case but thought it was too late to change the law.

Significance

This decision is authority for the proposition that part payment of a debt will not be sufficient consideration to create a binding agreement that the balance of the debt will be waived. Some further consideration or an agreement in the form of a deed is required.