Accord and Satisfaction — Part Payment as Settlement for Whole Debt — Defendant, Klinke, owed plaintiff, Petersime Incuator Co. $1602.06 on the purchase of hatchery equipment for which it gave three notes which were due May 1, June 1 and July 1, 1943. In a letter dated April 22, 1943, defendant asked plaintiff to reduce the balance so that defendant could liquidate this indebtedness and get a loan from a bank. Plaintiff replied by letter saying the best offer it could make was for the defendant to pay all the interest plus one half of the principal, "but this would have to be taken care of very soon." On May 18, 1943, defendant sent plaintiff a check for $869.47 which was the interest plus half of the principal, specifying it as "in full of the amount due you." On the face of defendant's check was written: "Payment of account in full to date." At this time the defendant also asked for the cancelled notes, so that it could close its records. Plaintiff didn't return the cancelled notes, but presented the check at its bank, which credited it to plaintiff's account. Subsequently, plaintiff asked for another payment but defendant replied that settlement had been made by the check for $869.47. Plaintiff brought this action to recover the alleged balance due on the promissory notes. *Held:* that plaintiff had made a contract of settlement with defendant reasonably warranting the finding that the part payment was a full accord and satisfaction of the whole debt. The court stated that there was consideration for the settlement since the notes of June 1 and July 1 both were satisfied by the payment of May 18, and such payment in advance together with the advance payment in full of all interest which would have accrued thereon up to the due dates, constituted sufficient consideration to support the contract of accord and satisfaction. *Petersime Incubator Company v. Klinke* (Wis. 1946), 21 N. W. 2d 377.

The general rule, followed reluctantly in most jurisdictions, is that the payment of a less sum can never sustain an agreement to discharge a greater sum. This rule stems from the time of Lord Coke and his ruling in *Pinnel's Case*,[1] at which period in history money was believed to have an unchanging value so that a smaller sum could never satisfy a larger. Although the rule is generally recognized, the applications of its exceptions have been more numerous than those of the rule itself; and most courts, while theoretically conceding the rule and its application to cases squarely within it, have shown no desire to extend the rule beyond its literal terms, and have seized on slight circumstances to take a case out of its operation. In the present-day business world it has come to be recognized that money, like other commodities, has fluctuations of value not only in the general

1. 5 Co. 117a (1602); J. Gold, "Present Status of Rule in Pinnel's Case," 30 Ky. L. J. 72-100, 187-204 (1941-1942).

market, but also, and more especially, to the individual. Despite adherence to the common law rule Wisconsin has shown a progressive disposition to disregard it in spirit, and in the present case has seized upon circumstances which could be construed as technical legal consideration, viz., the advance payment of interest and the part payment about a month before the notes were due, to take the case out of the general rule.

The instant case is in accord with previous Wisconsin decisions. In one of these[2] the defendant was indebted to an insolvent bank for $168,000, and offered to pay the bank's assignee $1486 in settlement of the debt and as an alternative to bankruptcy. The assignee accepted the money but later brought suit, claiming fraud in so small a settlement. The court found no fraud and held that where the creditor obtains some advantage which may possibly be realized in addition to the part payment by the debtor for release of his indebtedness, there is accord and satisfaction.[3]

> "The rigorous rule of common law, permitting a person to receive part of an undisputed, presently due indebtedness, pretending to accept the same in satisfaction of the whole indebtedness, the debtor parting with the amount paid with that understanding, and then change front and sue for the balance of such indebtedness on the ground that the release thereof was void for want of consideration, is so little favored by courts that it is commonly held not to apply where anything, whether of advantage to the creditor or disadvantage to the debtor, can be reasonably said to stand for that part of indebtedness not measured by the equivalent in money actually paid to the creditor."

There is a recent Indiana case[4] which demonstrates adherence to the general rule. The plaintiff was granted a divorce from defendant and obtained $10,000 alimony. Defendant paid nothing on the judgment for eight years till 1940, when a written agreement was made by which defendant was to pay installments until $3000 should be paid, this to be in full settlement of the judgment. In the subsequent action defendant tried to show by parol evidence that he was insolvent, and the money he had paid was not his own but that of his wife and himself, and that this became part of the consideration, since otherwise he would have been unable to pay the judgment. The court held that there was no valid consideration. The contract did not require him to do anything he was not bound to do, nor did it give plaintiff any advantage to which she was not entitled. Also, that the contract was complete on its face and defendant could not vary its terms

2. Herman v. Schlesinger, 114 Wis. 382, 90 N. W. 460 (1902).
3. *Ibid.* at p. 401.
4. Sunderman v. Sunderman, 63 N. E. 2d. 154 (1945, Indiana).

by parol evidence to show there was different consideration than that referred to in the agreement.

On the other hand there are several states that have changed the common law by statute,[5] and others that have changed it by decision.[6] Demonstrating the latter, in the Idaho case the defendant paid $1212.00 on a debt of $1490.40. Defendant testified that at the time payment was made it was understood it was to be in full payment of the $1490.40 then due, and that he was given a receipt at the time for payment in full. Plaintiff claimed that a verbal agreement to reduce the contract price, or to accept less than the amount actually due in consideration of payments presently made is void for want of consideration. But the court held that where an agreement to discharge a debt by payment of a smaller sum than is due is fully executed and such discharge is evidenced by a written receipt for the lesser sum in full satisfaction of the greater, there is a valid and irrevocable discharge of the debt. And the Minnesota court, in discarding the general rule, caustically remarked:

> "The doctrine thus invoked is one of the relics of antique law which should have been discarded long ago. It is evidence of the former capacity of lawyers and judges to make the requirement of consideration an overworked shibboleth rather than a logical and just standard of actionability."[7]

The instant case indicates that Wisconsin still pays lip service to the common law rule by searching for some benefit to the promissor or detriment to the promissee which can be accepted as consideration for that part of the debt not satisfied by payment.

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5. North Carolina, Georgia, Maine, Virginia, California, Alabama, Montana, North Dakota, Oregon, South Dakota, Tennessee and New York. Williston on Contracts, Section 120, Note 9 (1936).
6. Marysville Development Co. v. Hargis, 239 Pac. 522 (1925 Idaho); Frye v. Hubbell, 74 N. H. 358, 68 Atl. 325 (1907).
7. Rye v. Phillips, 203 Minn. 567; 282 N.W. 459 (1938); 119 A.L.R. 1125 (1939).