525 **Guaranty clause.**—*The leading case upon the second branch of this section is Buckmyr v. Darnall, Ld. Raym. 1058, referred to in Elder v. Warfield, 7 H. & J. 391; see S. C. and the instructive notes thereon in 1 Smith's Lead. Cas. 134.[36] It is commonly said, that to bring a case within the section there must be a liability or debt existing on the part of the person for whom the guaranty is given; second, it must not be the guarantor's own debt, and there must be no new consideration or original contract on his part, and third, the promise must be made to the person to whom the debtor is answerable.[37]

In Adams v. Anderson, 4 H. & J. 558, Adams took Nixon, a negro-trader from South Carolina, to Anderson and passed him off as a friend living in Washington, but a short distance from Anderson's residence, and induced Anderson to sell them each a slave for less than their value, it being agreed that the slaves were to be kept in the neighborhood, and for this Adams verbally agreed. It was intended all the while that the slaves were bought for the market, and after the sale Nixon forthwith carried them to South Carolina. In an action brought against Adams by Anderson for the deceit, it was held that here was no special agreement to answer for the default, &c., of another, but the transaction was a palpable fraud on the part of Adams, for which he was justly liable in damages; and in the similar case of Price v. Read, 2 H. & G. 291, it was determined that the jury in estimating these damages were not restricted to the mere pecuniary loss sustained by the plaintiff in the sale. In another case, Beck v. Thompson, 4 H. & J. 531, it was held that if an endorser, who had become security for his son, knowing that no demand had been made upon the drawer, and no notice given to himself, acknowledged the note to be due and promised to pay it, saying he was bound to pay his son's debts, but stipulating for time, he waived thereby the privilege given him by law, and was still liable to his indorsee, the creditor of his son. But this case is probably overruled by Wyman v. Gray, 7 H. & J. 409. It has also been held that this section of the Statute does not apply to instruments under seal, Edelin v. Gough, 5 Gill, 103.

In Read v. Nash, 1 Wils. 305, the plaintiff's testator had brought an action of assault and battery against A.; the cause was coming on for trial, when the defendant, in consideration that the testator would withdraw the record, promised to pay him a sum of money and the costs up to that time.

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[36] See generally on this clause, Beasten v. Hendrickson, 44 Md. 609; Smith v. Easton, 54 Md. 147; Wildes v. Dudlow, L. R. 19 Eq. 198; Lakeman v. Mountstephen, L. R. 7 H. L. 17; Guild v. Conrad, (1894) 2 Q. B. 885; Harburg Co. v. Martin, (1902) 1 K. B. 778.

[37] Where the guarantee is absolute and not a mere offer to guarantee, notice of its acceptance is not necessary to make the guarantor liable. Mitchell v. McCleary, 42 Md. 374; Boyd v. Snyder, 49 Md. 325.

If the guaranty is an original undertaking no notice of default is necessary to hold the guarantor; *contra,* if the guaranty is collateral. Donnelly v. Newbold, 94 Md. 220; Heyman v. Dooley, 77 Md. 169.