The record was accordingly withdrawn. The testator died and his executor brought this action, in which, as mentioned above, the defendant pleaded the Statute of Frauds. But the Court held that A. was not a debtor, for the cause had not been tried, and it did not appear that he had been guilty of any default or miscarriage, and that the promise therefore was an original promise sufficient to found an *assumpsit* against the defendant. This case, however, is considered in note (*l*) to 1 Wms. Saund. 211 c, Forth v. Stanton, to have been overruled by Kirkham v. Marter, 2 B. & A. 613, though the latter case is distinguished by the Court. In Reader v. Kingham, 13 C. B. N. S. 344, a judgment was recovered against A., in the County Court, for 34*l.*; and he was arrested by the plaintiff, the bailiff. The creditor authorized the latter to accept 17*l.*, upon the defendant promising the bailiff if he would release A. to produce him on a certain day or pay the rest of the debt; the defendant did neither, and this was held an original promise to produce A. or pay the plaintiff 17*l.*, for the promisee, the plaintiff, was not the original creditor.

So where one maintains and educates an infant with the knowledge of the father, the debt is the father's debt and not the child's, and the Statute does not apply, Thompson v. Dorsey, 4 Md. Ch. Dec. 149.[38] Where a party promised to pay for his infant grand-son, this was held not to be a promise to pay the debt of another for the infant was not liable, Harris v. Huntbach, 1 Burr. 373, and see Nabb v. Koontz, 17 Md. 283. So in Ellicott v. Peterson, 4 Md. 476, a grand-father undertook, that if his *daugh- **526** ter's husband would support and educate her children by a former husband, he would repay him, and the husband accordingly did so; the Court said that though the children might have been responsible, under other circumstances, for the support extended to them by their step-father, yet here it was not done upon their credit express or implied, but solely upon the credit of their grand-father, and where no credit is given to the party receiving the benefit of the services rendered or money advanced, the agreement to pay by a third person is an original undertaking and not within the Statute.

If a debt be extinguished by the party to whom the promise is made giving up in consideration thereof a demand against his original debtor, the promise is also an original undertaking, Andre v. Bodmann, 13 Md. 241; Goodman v. Chase, 1 B. & A. 297,[39] for both must be liable at the same time. It seems too from Small v. Schaefer, 24 Md. 123, that the expression, that there must be an extinguishment of the first debt as a consideration for the new promise, applies only to that class of cases where the creditor's relinquishment of the first debt is the motive of the promise. It does not follow of course, where other inducements are held out, such as the assignment of property or the relinquishment of liens, in consideration of which the promisor undertakes to pay the debt of another, see Castling v. Aubert, 2 East, 325, and as to cases of liens, note (*l*) to 1 Wms. Saund. 211 d, and Gull v. Lindsay, 4 Exch. 45, which is inconsistent with the other cases on

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[38] Cf. sec. 20 of the Sales Act of 1910, (Code 1911, Art. 83, sec. 23.)

[39] Webster v. Le Compte, 74 Md. 257.