the subject. In Williams v. Leper, 3 Burr. 1886; S. C. 2 Wils. 308 (see Bampton v. Paulin, 4 Bing. 64), a party being indebted for rent assigned his goods to the defendant in trust for his creditors; he advertised a sale, and on the landlord's coming to distrain, promised that if the distress were not made he would pay the rent. One of the judges considered the goods as the debtor, and that the promise was not to pay the debt of another, but the debt for which the goods were liable, of which the defendant was owner (see also Fitzgerald v. Dressler, 7 C. B. N. S. 374), and this, it is insisted in 1 Wms. Saund. 211 c, n. (*l*) to Forth v. Stanton, is the true ground of the decision, and that if the defendant had not been the true owner of the goods the promise must have been in writing. Mr. Justice Yates further held that the defendant was bailiff for the landlord, and that if he had sold the goods and received the money for them, an action would have lain for money had and received to the plaintiff's use. This case was relied on in Raymer v. Sim, 3 H. & McH. 451, where A. placed in the hands of B. sufficient property for the purpose of paying a debt of A. to C., and B. turned the property into money and promised C. to pay the debt, and held that C. might maintain *assumpsit* against B. on the express promise, though there was no note in writing, for he had funds in his hands to pay the debt; but it would have been otherwise if the property had not been converted into money, though the consideration alleged was forbearance of suit[40]—a decision which goes to show that the true question in all cases is whether the promise is to pay *the debt* of another; if it is, it must be in writing. Williams v. Leper, see also Edwards v. Kelly, 6 M. & S. 204, is usually considered the leading one of that class of cases, where, although the debt of another is secured to be paid in any event, yet the main object of the transaction is to secure some particular advantage or benefit to the promisor, or, as it is expressed by the Supreme Court in Emerson v. Slater, 22 How. 78, where the main purpose of the promisor is to serve some pecuniary or business purpose of his own, though the transaction take the form of promising to pay the debt of another.[41] Upon this principle the case of Couturier v. Hastie, 8 Exch. 410, was decided, that an agreement by a factor to sell on a *del credere* commission was not within the
527 Statute.[42] A factor *del credere* undertakes *with the owner to sell goods consigned, to receive the purchase money and make remittance. He differs from a general factor in this, that for an additional compensation

[40] **Forbearance of suit as a consideration.**—In order that forbearance to sue may be a valid consideration for a promise to pay the debt of another, the promisee must have at the time a good cause of action; otherwise the promise, even if in writing, is invalid. Ecker v. Bohn, 45 Md. 278; Ecker v. McAllister, 45 Md. 290; Smith v. Easton, 54 Md. 147; Ecker v. McAllister, 54 Md. 373. Cf. Schroeder v. Fink, 60 Md. 436. Forbearance to sue, without any new or superadded consideration, is not of itself sufficient to take a promise to pay another's debt out of the Statute. Thomas v. Delphy, 33 Md. 373. Cf. Frank v. Miller, 38 Md. 461.

[41] Little v. Edwards, 69 Md. 505; East Balto. Co. v. Israel Cong., 100 Md. 125; Dryden v. Barnes, 101 Md. 346; Oldenburg v. Dorsey, 102 Md. 179.

[42] Lewis v. Brehme, 33 Md. 430; Sutton v. Grey, (1894) 1 Q. B. 285.