

he agrees to find, at his risk, a competent purchaser, and to assume the risk of collecting the purchase money. He is, in form, the vendor; the purchaser becomes, in form, his debtor. He need not disclose the principal. If he does, he may still sue in his own name, and the right of the consignor to sue, or to intervene in any way, is to be traced through him. If the principal sues him, it is upon his contract to sell, &c., and the breach would be, that although he had sold, &c., he did not collect and remit the proceeds of sale. In *Mallett v. Bateman*, 16 C. B. N. S. 530; S. C. 1 L. R. C. P. 163, however, the plaintiff had contracted to deliver goods to A. & Co. for cash. A. & Co. desiring to obtain the goods at a month's credit, the defendant, who appears to have had an interest in their delivery, promised the plaintiff, that if the latter would furnish the goods to A. & Co., drawing on them at one month, and allow him, the defendant, three *per cent.* on the amount of the invoice, he would pay the plaintiff cash, and take A. & Co.'s bills without recourse; this was held not to be a purchase of the bills, but a contract to answer for the debt of another; Pollock C. B. observing that a contract to give a guarantee is required to be in writing as much as a guarantee itself.

In cases on this clause of the section, the question generally is to whom the credit has been given, in order to determine whether the promise is an original one and out of the Statute, or collateral and within the Statute. The subject is discussed at large, and many of the leading authorities referred to, in *Elder v. Warfield*, 7 H. & J. 391.⁴³ The Court observed that the general distinguishing characteristics of these two species of undertaking are these: where there is a pre-existing debt or liability, a promise to pay by a third person having immediate respect to and founded upon such debt or liability, without any new consideration moving to the promisor, is a collateral engagement, but where, distinct from the original liability, there is a superadded consideration for the promise, moving between the party making it and the party to whom it is made, the undertaking is an original one. Where there is no previous liability, but the promise of one is the inducement to, and ground of the credit given to another, by which a debt or liability is created in him to whom the credit is given, such a promise is collateral, the general rule being, that wherever the party undertaken for is originally liable upon the same contract, the promise to answer for that liability is collateral, and must be in writing.⁴⁴ But

⁴³ See also *Culbertson v. Smith*, 52 Md. 628.

⁴⁴ If any credit is given to the party undertaken for, the undertaking is collateral. *Norris v. Graham*, 33 Md. 56. But the Statute does not apply at all to a joint promise by two persons for the benefit of one of them. Hence where the person to whom the goods were sold and the one who orally undertook to be bound for their price are sued together as joint original promisors, the action will not be defeated as to the latter by showing that credit for the goods was given partly to one and partly to the other. *East Balto. Co. v. Israel Cong.*, 100 Md. 691; *Oldenburg v. Dorsey*, 102 Md. 178. Nor, if the defendant is originally liable, will his liability be released by the act of the plaintiff in calling on any one else for payment. *Norris v. Graham*, *supra*.