writing, Batson v. King, 4 Hurl. & N. 739.[48]

A promise to a debtor to pay his debt to a third person is not within the Statute, Eastwood v. Kenyon, 11 A. & E. 438; Hardesty v. Jones *supra*, where there was a new and original promise to the debtor to discharge a debt due by him. The Statute contemplates a default, &c., of a *third person* towards the *promisee*. It is no more within the Statute, said the Court, than a promise to pay the debtor the same sum of money instead of paying a subsisting debt. However, it is observed in Small v. Schaefer, 24 Md. 143, that the main object of the promisor in Hardesty v. Jones was to procure a waiver of objections of a surety of the debtor to an assignment of his assets for the benefit of the promisor. The case would then depend on a different principle. But it seems pretty clear that Small v. Schaefer itself is properly within this last exception. As to the giving up a guarantee, see Brooks v. Haigh, 10 A. & E. 309.

In the case of goods furnished for the use of another where the undertaking is collateral, the declaration in an action founded on such collateral undertaking must be on the special promise. Where the undertaking is an original one, *indebitatus assumpsit* is a proper form of action, Elder v. Warfield *supra*. In other words, the declaration on a promise within this branch of the section must be special, and so the price of goods sold to A. and guaranteed by B. cannot be recovered from B. under the common counts.[49]

Marriage clause.[50]—It is now settled, though there have been decisions to the contrary, Philpot v. Wallett, 3 Lev. 65, that the next clause, respecting agreements made in consideration of marriage, does not extend to mutual promises to marry, which are binding although not reduced to writing and signed by the party, Cork v. Baker, 1 Str. 34; Harrison v. Cage, 1 Ld. Raym. 386; Ogden v. Ogden, 1 Bl. 384;[51] and the effect of it is that a contract to settle property in consideration of marriage is not to be enforced unless evidenced by writing. However, a parol ante-nuptial contract acknowledged by writing after the marriage will be good against the contractor, and a settlement made in pursuance of it supported as a voluntary conveyance, see Hammersley v. De Beil, 12 Cl. & F. 45; (Thompson v. De Beil, *ibid. n.*); Warden v. *Jones, 2 De G. & J. 76, overruling **529** Dundas v. Dutens, 2 Cox, 235; but it is settled, Bowie v. Bowie *supra;*

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[48] The Statute has no application to a suit on an acceptance which, as against the payee, conclusively admits funds of the drawer to be in hand. Laflin Co. v. Sinsheimer, 48 Md. 411.

[49] If, in an action to recover for wood furnished a third party "on the credit and guaranty of the defendant," the evidence shows that the defendant contracted with and purchased the wood from the plaintiff and was to pay for it, there is a variance between the *allegata* and the *probata* and the plaintiff cannot recover. Norris v. Graham, 33 Md. 56.

[50] The following are the more recent English cases on this clause: Trowell v. Shenton, 8 Ch. D. 318; *In re* Rownson, 29 Ch. D. 358; Johnson v. Bragge, (1901) 1 Ch. 28; *In re* Holland, (1902) 2 Ch. 360.

[51] Affirmed in Lewis v. Tapman, 90 Md. 294.