see this case *post*. And where the understanding of the parties at the time is, that the contract is not to be completed within a year, although it be in part performed within that time, the Satute applies. This is the well known case of Boydell v. Drummond, 11 East, 142; and in Birch v. Earl of Liverpool, 9 B. & C. 392, a contract, whereby a coachmaker agreed to let a carriage for five years in consideration of receiving an annual payment for its use, but which, by the custom of the trade, was determinable at any time within that period by the payment of a year's hire, was held an agreement not to be performed within a year. "The contract," said Bayley J., "was in its terms an agreement for five years, determinable by the parties within that period; it was in the very terms of it an agreement not to be performed within a year." This case was determined to be precisely in point in Dobson v. Collis, 1 Hurl. & N. 81, and the rule extends to every case where a contract for more than a year may be defeated by a given event within a year.

536 *But though part performance will not avail at law as before observed,[70] it may avail in equity. And the Court of Appeals have said in Jones v. Hardesty, 10 G. &. J. 404, that a Court of equity will not permit a party, who has received a valuable consideration for the performance of a parol agreement not to be performed within a year from its date, to set up the Statute of Frauds in bar of its specific execution.

What agreement must contain—Consideration.—With regard to the agreement or memorandum thereof. The word "agreement" is not understood as a promise or undertaking simply, but in its proper legal sense, as a mutual contract, on a consideration, between two or more parties, the whole of which consideration as well as promise must be in writing, Ogden v. Ogden, 1 Bl. 284, and the consideration cannot be looked for outside of it. In England, a very sensible provision has been made by Stat. 19 & 20 Vict. c. 97, s. 3, in respect of promises to answer for the debt, default or miscarriage of another, that no such promise, being in writing, shall be invalid by reason only that the consideration for such promise does not appear in writing, or by necessary implication from a written document.[71] No similar provision is made in respect of the other matters mentioned in this section, but the question both in England and here has generally arisen on the construction of guaranties.

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[70] Where, however, money has been paid or services have been rendered and accepted under a contract which is unenforceable under the Statute, recovery can be had on the common money counts or *quantum meruit*. Baker v. Lauterbach, 68 Md. 64; Green v. Pa. Steel Co., 75 Md. 112; Hamilton v. Thirston, 93 Md. 220.

[71] A similar provision was made here by the Act of 1900, ch. 362, the terms of which are as follows: "Where an action, suit or other proceeding is brought for the purpose of charging any person on a special promise to be answerable for the debt, default or miscarriage of another person, it shall not be necessary to show that the consideration for such promise is in writing." Code 1911, Art. 35, sec. 38.