

debt, default or miscarriage of another, contrary to the provision of the fourth section of that statute; which declares that a party shall not be so charged, "unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him properly authorized."

The evidence of Judge Crain conclusively proves that an agreement was signed by the late Mr. Brawner, binding him to pay this debt, and that it is lost, and upon diligent search cannot be found. Secondary evidence of the contents of the agreement, which was in the form of a letter from the deceased to Brooks, Stephens & Co., is, therefore, admissible, and, it appears to me, taken in connection with the other evidence, to furnish a full answer to the statute of frauds.

It might not be very easy to determine whether the engagement of Mr. Brawner in this case is a collateral or original one; and even though collateral, whether it might not be classed with those engagements, which being made at the time of the principal contract, was an essential ground of the credit given to the principal debtor, thus forming an original and entire transaction; and resting upon the consideration upon which the whole debt rested, may not be shown by parol proof, as not being within the statute, as was decided in *Seward vs. Vrendenburgh*, 8 *Johns. Ch. Rep.*, 29, confirmed in other cases in New York, and declared to be the reasonable doctrine in *De Wolf vs. Raband et al.*, 1 *Peters S. C. Rep.*, 476.

But the agreement in this case, as proved by the witness, is in strict conformity with the statute, both the engagement and consideration being in writing, even if it be necessary that the latter should be in writing, which, however, is said, by an eminent judge, to be against the weight of American authority. 3 *Kent's Com.*, 122, note e.

The witness says, he called on Mr. Brawner in July, 1838, for the payment and settlement of these claims, that Mr. Brawner admitted his indebtedness, that the claim on the open account was predicated on a letter written by Mr. Brawner to