

Brooks, Stephens & Co. requesting them to let Mr. Stewart have goods.

The witness then goes on to speak of another conversation with Mr. Brawner, immediately preceding the August term of the County Court in 1838, when he begged the witness not to sue him, and to write to Chauncy Brooks that he would certainly make an early arrangement to pay the money—that the witness did write accordingly, desiring him to indulge Mr. Brawner, and that he would not sue him, as he considered Mr. Brawner perfectly safe, and that Mr. Brooks left it to his discretion. And upon cross-examination the witness said, that “the letter stated that he, Henry Brawner, would be answerable for any goods bought by Stewart from Brooks. It was dated, as nearly as I [he] can recollect, in 1836, and before the date of the account, which Mr. Brawner recognized to be correct, and promised to pay.”

If, therefore, Stewart is liable upon this contract, and the engagement of Brawner is to be regarded as a collateral promise, which, however, does not necessarily follow from the fact that the account is made out against Stewart, still, the undertaking being in writing, and the consideration being likewise in writing, the case seems entirely free from difficulty, even if the English construction of the statute of frauds, requiring both to be in writing, be adopted here.

I am, therefore, of opinion, that the statute of frauds is no defence against this claim, and that it is sufficiently proved.

I do not understand it to be insisted that the personal estate of the deceased is adequate to pay his debts, and, my opinion is, that there is satisfactory evidence of the insufficiency to authorize a decree for the sale of the realty.

The counsel for the complainants may, therefore, prepare a decree for that purpose, in which the question in reference to the liability of the estate of the deceased, for the whole amount of the note before mentioned, will be reserved, and with a further reservation of the right of Mrs. Brawner, or her personal representative, to establish her claim as a creditor, with respect