

Statute of Frauds

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be permitted to have such an examination on the mere suspicion that he may discover facts on which to base a case or a defense. He should, before commencing such an examination, have some good grounds to believe that the examination will result in disclosing details of evidence on which he can base a claim or a defense in conjunction with the facts or information theretofore in his possession. With such grounds and purpose, his fishing for such details of evidence is, in the writer's opinion, perfectly proper, and is contemplated by such statute.

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SUBSECTION 2 OF SECTION 2307 OF THE WISCONSIN STATUTES

This section of the statute of frauds is as follows:

Agreements, what must be written. Section 2307. In the following case every agreement shall be void unless such agreement or some memorandum thereof, expressing the consideration, be in writing and subscribed by the party charged therewith:

- (1)
- (2) Every special promise to answer for the debt, default or miscarriage of another person.
- (3)

From its very language it will be seen that it involves only a promise to pay the original debt of *not* the promisor, but the debt of an obligor under a then existing obligation, or the prospective debt of an original obligor of a contemplated obligation. This distinction is well illustrated in the oft given example with which the law student is first acquainted when studying this section in contracts: If A enters a store with B and asks the proprietor to sell goods to B, saying that "if B does not pay for them, I will", or "B owes a debt to you and if he does not pay, I will", that is such a special promise to answer for the debt of another as to be within the letter of the statute and in order to be valid must comply with the requirements expressed in the statute. B is the principal debtor and the obligation to pay is his, which obligation, however, also becomes A's if B fails to pay. An illustration of this can be found in *Reynolds vs. Carpenter*, 3 Pinney, 34, where this statute was first construed in this state. The defendant, a contractor, orally promised the plaintiff, a

keeper of a boarding house, that he would pay the amount of certain board bills due the plaintiff from laborers who were to work for him. It was held to be clearly within the statute and that evidence of such oral promise was not admissible.

Again, if A says "sell B goods and I will pay for them", it is not a special promise to pay B's debt, but to pay his own (A's), as he assumed to pay without B obligating himself. This is illustrated in *Hull vs. Brown*, 35 Wis. 653, where an agent, who sold a machine to the plaintiff, promised that if the machine was not satisfactory and plaintiff had to pay the note which he had given to agent's employer, he would reimburse him, was held liable on his promise as an original undertaking, as his employer never obligated himself to refund the money. See *Champion vs. Doty*, 31 Wis. 190. So also where defendant, under a tentative sale, promised plaintiff that he would reimburse him for moneys which he was to advance to the laborers, it was held that such promise to reimburse was not to pay the debt of the laborers to plaintiff (which contention was advanced) but to repay to plaintiff sums advanced for the benefit of the defendant and valid. *McCord vs. Edward Hines Lbr. Co.*, 124 Wis. 509. See also *Kaufer vs. Stumpf*, 129 Wis. 476.

To be within this section of the statute of frauds the promise must be in substance a guaranty which may be defined as follows:

"A contract whereby one person, the guarantor, promises another person, to be answerable in the event of a third person, the principal debtor, making default in respect to a liability incurred or to be incurred by such third person to the promisee."

His liability is wholly contingent upon the original debtor's failure to pay. The creditor can resort to him then only.

The purpose of this article is to show what constructions have been placed upon this statute with reference to the various facts involved in the promises sued upon.

As the most difficult problem is to decide which promises are not within the statute it might be logical to mention these cases first.

PROMISES NOT WITHIN THE STATUTE.

In *Hall vs. Wood*, 3 Pinney 308, Wood, the plaintiff in the court below, sold oxen to Bullard. At the time of sale Hall told Wood that if he would let Bullard have the oxen, he, Hall, would pay for them. The proof was clear that Wood would not

let Bullard have them until Hall agreed to pay for them. The court, in deciding that the promise was not within the statute, declared the question to be determined by ascertaining to whom the "original credit" was given. If it was given to Bullard it would be within the statute and void, but if to Hall, which was evidenced by Wood not wanting to give the oxen to Bullard until Hall agreed to pay for them and that he never intended to look to Bullard for payment, but only to Hall, it was not within the statute. See *McCartney vs. Hubbell*, 52 Wis. 360. A promise of a contractor with merchants to pay orders and time-checks issued by a sub-contractor to his employes (sub-contractors) for which the merchant gave out stock, giving credit exclusively to the defendant, was held to be a promise not within the statute. *West vs. O'Hara*, 55 Wis. 645. A promise to pay for future work for another is not within the statute if the credit is given to the promisor and not the person for whom the work is done. *Weisel vs. Spence*, 59 Wis. 301. In an action for specific performance the complaint alleged that there was at one time fifty-six dollars still owing from the plaintiff to the defendant; that the defendant was indebted to one Page in a sum exceeding fifty-six dollars; that it was agreed between plaintiff, defendant and Page, that if plaintiff would give his note to Page for fifty-six dollars that Page would credit the defendant with that amount; that the plaintiff executed and paid the note to Page. The statute was relied on as a defense on demurrer. It was held, without deciding whether it was a promise within the statute, that the statute could not be successfully interposed as the agreement had been fully executed and performed. *Story vs. Menzie*, 3 Pinney 329. It could not possibly have been decided to be such promise, as to the writer's mind there could be no clearer case of novation by which the debt is discharged as to the original debtor and becomes the promisor's. See *Emerick vs. Sanders*, 1 Wis. 77, 96; *Cotteril vs. Stevens*, 10 Wis. 422; *Cook vs. Barrett*, 15 Wis. 660; *Rietzloff vs. Grover*, 91 Wis. 65.

In *Putney vs. Farnham*, 27 Wis. 187, Farnham owed C, and C owed F and G. Farnham proposed, and all agreed, that he pay F and G the amounts which they had coming from C. After process had been served on Farnham as garnishee of C, he made these payments to F and G. Held not to be a promise to answer for the debt of C but to pay his own debt in a particular manner. This could also be sustained (as it fundamentally is) on the

principle of novation, there being a substitution of debtors. A contractor, under an agreement with D & B, sub-contractors, could pay the laborers of D & B and deduct such wages from the amount due D & B. He told the laborers that he would "pay them himself." He was made garnishee defendant of D & B. He continued to pay the laborers after the service of the process. Held not liable as he had, before the service of the process, legally obligated himself by an original undertaking to pay the laborers and not a promise to pay them if D & B did not. *Balliet vs. Scott*, 32 Wis. 174. In these cases the practical distinction between our statute, which provides that such agreements "shall be void", and the English statute, which provides that "no action shall be brought", is appreciated, as the invalidity of the contract can be taken advantage of by persons not parties to it.

In *Murphy vs. Gates*, 81 Wis. 370, one B was arrested in a former action. Plaintiff was his attorney. Defendant was surety on B's bond for his appearance. B left the state. Plaintiff made a motion for the vacation of the order of arrest, which motion was denied, and took an appeal. The defendant promised to pay \$200 to the plaintiff for the purpose of such appeal. On this agreement alone plaintiff proceeded with the case. Defendant's promise was held to be a valid promise, not within the statute, as there was consideration moving to him by reason of his interest in the outcome of the appeal. An agreement with an attorney to pay for services to be rendered in the defense of a third person, made before any substantial work had been done on the case, is not an engagement to answer for the debt of another. *James vs. Carson*, 94 Wis. 632.

In *Drovers Deposit National Bank vs. Tichenor*, the defendants, who were stockholders in the Tichenor-Grand Company, in an agreement reciting their interest and their desire to assist it in getting credit, promised, in writing, that if the plaintiff bank would discount certain promissory notes held by the company and made by one Nicholson, *they would pay them at maturity*. Such writing was held to be not a mere collateral agreement to answer for the debt of another, but an original promise to pay what, under the agreement, would become their debt. As at the time of the agreement there was no debt in favor of the plaintiff, it could not be such a promise. That an instrument, even though called a "guaranty", is not necessarily such but that its nature should determine its character rather than the name

applied to it. The consideration for such a promise where there is no existing debt may be a benefit to the promisor or a detriment to the promisee (which is the consideration sufficient to create any contractual liabilities), in this case it being a detriment to the promisee, as it parted with its money relying on the promise. 156 *Wis.* 251.

Where accommodation makers returned their security to the maker, and the defendant, in consideration thereof, executed the following: "I hereby guarantee the above named C & S harmless for damages or liabilities in consequence thereof in case they allow said B to manage the place himself", the court held this was an original undertaking assuming to pay the note for them and not an undertaking to pay if they did not. Consideration here was detriment to promisee. A promise to indemnify a surety, which is made by third person, at whose request and upon whose credit the surety enters into his engagement, is not within the statute. *Shook vs. Vanmatter*, 22 *Wis.* 532, analogous to *Drover's Deposit National Bank vs. Tichenor*. *Vogel vs. Melms*, 31 *Wis.* 306, was based solely on the precedent of *Shook vs. Vanmatter*. A promise by defendant to plaintiff to indemnify him for endorsing C's note, which was payable to plaintiff, for the purpose of negotiation by endorsement, was held not to be void. In *Cribb vs. Houghton*, 64 *Wis.* 333, plaintiff brought replevin for possession of collateral securities. Defendant discounted notes for the plaintiff, but was not to be held responsible for protest and plaintiff was to stand risk of collection and there was an agreement to keep collaterals of the plaintiff with the defendant as security for any notes protested. It was held that the plaintiff's promise as indemnifying the defendant was not within the statute.

A trustee for creditors, who promised the plaintiff that if he did not file a lien he would pay him, was held liable on his promise as an original undertaking even though plaintiff said "if I don't get my money for M & B, I shall look to you." The decision was based on *Dyer vs. Gibson*, 16 *Wis.* 557, where a promise (like the one here), in form a promise to pay the debt of another, was an original undertaking supported by a new consideration moving to the promisor. The release of the lien increased his commissions. *Young vs. French*, 35 *Wis.* 111. "Where the party promising has for his object some benefit and advantage accruing to himself, and on that consideration makes the promise, this distinguishes the case of an original undertaking from one within

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the statute." *Weisel vs. Spence*, 59 Wis. 301; *Clapp vs. Webb*, 52 Wis. 638; *Hoile vs. Bailey*, 58 Wis. 434. Also *Gray vs. Herman*, 75 Wis. 453. In *Drover's Deposit National Bank vs. Tichenor*, *supra*, the promise was not to pay an existing debt but to assume to pay the debt which was to be created on the strength of their promise and became an original promise to pay their own debt. The law laid down in that case that a consideration may be either a benefit to the promisor or a detriment to the promisee should not be considered to overrule what was said in *Weisel vs. Spence* and the other cases cited above as those were promises of guaranty and to support them *the consideration must move to the promisor*. *Dyer vs. Gibson*, *supra*, was modified to the extent that it is not necessary that the original debtor have no interest in the promise or derives no benefit therefrom. *Hoile vs. Bailey*, 58 Wis. 434; *Clapp vs. Webb*, 52 Wis. 638; *Young vs. French*, *supra*; *Putney vs. Farnham*, 27 Wis. 187. So also a promise to release a lien, if made with the view and with the result of obtaining a benefit to the promisor, the mortgagee of the chattel, is not within the statute, although the original debtor is not released from liability. *Weisel vs. Spence*, *supra*. See also *Kelly vs. Schupp*, 60 Wis. 76. Where plaintiff, who had a bill of sale of a part of a debtor's personal property, made an agreement with him and defendant by which the debtor transferred all his personal property to the defendant, including that covered by the bill of sale, who, in consideration of such release and transfer, orally promised to pay the debt to plaintiff, it was held that, though in form a promise to pay the debt of another, the new consideration passing to him made it a valid promise and not within the statute. Also that it was a promise to pay his own debt in a particular manner. *Green vs. Hadfield*, 89 Wis. 138. Forbearance by a sub-contractor to file a lien which he erroneously thinks he has a right to file, is a good consideration moving to the owner for his promise to pay and the new consideration takes it without the statute. *Hewitt vs. Currier*, 63 Wis. 385; *Young vs. French*, 35 Wis. 111. In *Wyman vs. Goodrich*, 26 Wis. 21, the owner of a note, as part of the terms of the sale thereof, guaranteed its payment in writing without expressing the consideration. Held not to be within the statute, as there was sufficient consideration passing to the promisor. So also *Eagle M. and R. Machine Co. vs. Shattuck*, 53 Wis. 455. The giving up of assets by a guardian to a ward who became of age,

in consideration of his release as guardian of that ward and the assumption by the former ward of the guardian's liability to the remaining ward is sufficient consideration moving to the promisor to be a valid obligation not within the statute. *Martin vs. Davis*, 80 Wis. 376. Where a partnership is formed to carry on the business formerly conducted by one of the partners, an oral agreement, that as a part consideration of admission to the firm the one taken in shall assume as a partner his share of the existing debts and that they shall be paid by the firm, is valid, sufficient consideration passing to the promisor. *Clasgens vs. Silber*, 93 Wis. 579.

A promise of a grantee, as part of the purchase price, to assume and pay an existing mortgage on the land is not a promise to pay the debt of another but to pay his own debt to a person other than his original creditor (grantor). *Morgan vs. South Milwaukee Lake View Co.*, 97 Wis. 275. So also where defendant purchased from the mortgagees of M, an insolvent, his stock of goods under an agreement to pay the mortgagees the amount of their claim, it was held that the promise was not to pay the debt of M, but to pay his own purchase price for the goods received by him. *Lessel vs. Zillmer*, 105 Wis. 334. An oral agreement to pay certain debts of the grantor in consideration for the transfer of the property to the promisor is not a promise to answer for the debt of another but to pay his debt owing to the grantor to another. *Fosha vs. O'Donnell*, 120 Wis. 336. While in these four last cases the court decided that it was not a promise to pay the debt of another but to pay his own debt, the result could also be sustained, even though construed to be such a promise, by reason of the new and sufficient consideration of benefit to the promisor.

The basis of the "new consideration" rule is that when one person, for a valuable consideration, engages with another to do some act for the benefit of a third person, the latter may maintain an action against him for a breach of such engagement. *Bassett vs. Hughes*, 43 Wis. 319.

PROMISES WITHIN THE STATUTE.

(Oral promises to answer for the existing debt of another, without a new and sufficient consideration passing to the promisor.)

Where W sold lime to K to construct a building for M and, after the sale of the lime, M orally promised to pay W for the

time, such promise was held to be to answer for the debt of another and void unless complying with the statutory requirements or unless proof of new and sufficient consideration passing to the promisor be shown. *McDonell vs. Dodge*, 10 Wis. 106. A, being indebted, left property in the possession of B to sell and pay his debts, and B afterward orally promised S to pay him the debt which A owed to him. The promise was void, there being a subsisting debt and no new consideration passing to the promisor. *Emmerick vs. Sanders*, 1 Wis. 77. Plaintiff had a sum of money coming from a railroad which had deeded its property in trust under a mortgage to the defendant. Defendant promised, orally, that if the plaintiff would procure the passage of a resolution by the railroad authorizing the defendant to pay such sum it would pay him. The plaintiff procured the passage of such a resolution. It was held to be a promise to pay the still subsisting debt of the railroad company without a new consideration having passed to the promisor. *Osborne vs. Farmers Loan and Trust Company*, 16 Wis. 35. An oral promise by a widow to pay the note of her dead husband is a promise to pay the debt of another and void. *Hoefflinger vs. Stafford*, 38 Wis. 391. Where the benefit to the promisor was merely incidental and not the object of the promise, such promise is void, if not in writing and expressing a consideration. *Clapp vs. Webb*, 52 Wis. 638. An oral promise by the president of a village board to pay the plaintiffs *in case of their inability to collect from the village* was held to be void, no consideration being shown which would be of benefit or advantage to him. *Hooker vs. Russell*, 67 Wis. 257. If the original debtor is *not* released from liability, an oral promise by a third person to pay the debt, in consideration that the creditor will release a lien which he holds upon the property of the debtor, when no benefit accrues thereby to such third person, is within the statute and void. *Gray vs. Herman*, 75 Wis. 453. Where mortgagees released their lien and allowed the receiver of the insolvent debtor to sell the property on his oral promise, both as receiver and personally, to pay them, it appearing that he personally received no benefit from such release, it was held to be void. *Bray vs. Parcher*, 80 Wis. 16. This case may be distinguished from *Young vs. French*, *supra*, on the ground of commissions being a benefit to the promisor. In *Malone vs. Knickerbocker Ice Co.*, 88 Wis. 542, plaintiff, a surgeon, attended an injured employe of defendant; after part of the services had been

rendered and charged on plaintiff's books against the employe, defendant's manager said, "take care of Jim. We intend to see him through." Held, that if this was a promise to pay for plaintiff's services it was not valid as to services already rendered, as not complying with the statutory requirements. Where the agreement out of which the promise arose is void by section 2302 of the statutes, the promise being oral and to pay the debt of another, it is void under sub-section 2 of section 2307. *Kaufer vs. Stumpf*, 129 Wis., 476, 483.

(Written promises to answer for the debt of another which express a consideration and are valid.)

Where a writing asking a bank to let son overdraw is in substance a guaranty and collateral to the liability to be incurred by the son, the consideration is sufficiently expressed. *Miami County Bank vs. Goldberg*, 133 Wis. 175. "I hereby guarantee the collection of the within note, for value received", is a sufficient expression of consideration. *Day vs. Elmore*; *Dahlman vs. Hammel*, 45 Wis. 466; *Jansen vs. Kuenzi*, 145 Wis. 473. "I hereby guarantee payment of all goods Fass may buy from B. Young and Son", and signed, was held to be a sufficient expression of consideration, it being the sale of goods to Fass. *Young vs. Brown*, 53 Wis. 333. "Clark will purchase a small stock of goods from you which I hope you will sell him cheap. I have no doubt he will make you a valuable customer. I hereby guarantee the collection of any amount which you credit him with, not exceeding \$2000", and signed, was held to be a sufficient expression of the consideration. *Eastman vs. Bennett*, 6 Wis. 232. A covenant under seal imports a consideration and the promisor is bound. *Kurner vs. Smith*, 108 Wis. 549. The word "account" in a written guaranty, when it refers to an indebtedness to be created, sufficiently expresses the consideration. If it referred to an existing indebtedness, the "account" or original debt would be the consideration and this is void. *Waldheim vs. Miller*, 97 Wis. 300. The consideration is gathered from the memoranda relating to future sales. See also *Coxe Bros. vs. Millard*, 110 Wis. 499; *Scollard vs. Bach*, 136 Wis. 63. Taking over of business, where recited in written guaranty, and forbearance on the part of the promisee from proceeding and levying on goods of original debtor, is sufficient expression of consideration. *Roundy, Peckham & Dexter Co. vs. Baldwin*, 161 Wis. 342. Also *Williams vs. Ketchum*, 19 Wis. 231.

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(Promises to answer for the debt of another though being in writing, do not express a consideration.)

In *Bank of Commerce vs. Ross*, 91 Wis. 320, a written promise to pay an existing debt was held void, no consideration for the promise being expressed. The original debt is not sufficient consideration. Where it appears that a lease is not a joint contract, a promise in writing "to become security for the prompt payment of the rent" must express a consideration. The lease itself is not sufficient consideration. *Hutson vs. Field*, 6 Wis. 407. A debtor having two creditors, plaintiff and defendant, gave the latter a chattel mortgage on his stock of goods and the agent of the defendant, who had conducted the transaction, went to the plaintiff and verbally agreed that if it would forbear commencing proceedings which it contemplated taking to enforce its claim, the defendant would protect it up to a certain amount of its claim. Plaintiff agreed and wrote defendant stating that the agent had guaranteed the claim, *but not stating* on what consideration, and requested that it be confirmed. Defendant agreed by letter to guarantee the same *but did not state the consideration or any consideration*. The promise was held void as a promise to pay the debt of another, without the consideration being expressed. The promise could not be sustained on the ground of new consideration passing to the promisor as the court decided that the extension of time by the one creditor does not constitute a sufficient consideration moving or beneficial to the promisor. *Twohy Mercantile Co. vs. Ryan Drug Company*, 94 Wis. 319. Failure to state "for value received" or any expression of consideration, on a note by an accommodation endorser, makes it void. *Commercial Nat. Bank vs. Smith*, 107 Wis. 574; *Parry vs. Spikes*, 49 Wis. 385; *Taylor vs. Pratt*, 3 Wis. 674. The guarantor of a correspondence school contract, who signed a guaranty which expressed no consideration was not held to his promise. *International Text Book Co. vs. McKone*, 133 Wis. 200.

From the decisions reviewed here it *might* be safe to say that:

1. Where, at the time of the promise, whether oral or written, there is no debt owing to the promisee and the promisee relying on the promise gives exclusive credit to the promisor, it is not within the statute as not being to answer for the debt of another. (*Hall vs. Wood*; *Champion vs. Doty*; *Hull vs. Brown*; *West vs. O'Hara*; *Weisel vs. Spence*; *Drover's Deposit National Bank vs. Tichenor*. Also *James vs. Carson*.) Here the consideration may be

either a benefit to the promisor or a detriment to the promisee.

2. Where, at the time of the promise, there is no debt owing to the promisee, a promise to indemnify the promisee against a liability which he may incur, is not a promise to answer for the debt of another. (*Shook vs. Vanmatter*; *Vogel vs. Melms*; *Cribb vs. Houghton*.)

3. An oral promise to pay the debt of a grantor, as part consideration of the purchase price, is not to pay the debt of the grantor, but promisor's own debt in a particular manner. (*Morgan vs. South Milwaukee Lake View Company*; *Fosha vs. O'Donnell*; *Lessel vs. Zillmer*; *Green vs. Hadfield*.) As said before, the validity of these promises could also be sustained on the theory of new and sufficient consideration passing to the promisor.

4. Where the original debtor is discharged by a novation, there being no debt for which the promisor promises to answer, it is not within the statute, but a promise to pay his own debt. (*Emmerick vs. Sanders*; *Cotterill vs. Stevens*; *Cook vs. Barrett*; *Putney vs. Farnham*; *Balliet vs. Scott*; *Rietzloff vs. Grover*.)

5. If original debtor is discharged and promise to pay is in consideration of such discharge it need not be in writing, nor need there be new consideration passing to the promisor as there is no debt of another for which he promises to pay and the discharge being a detriment to the promisee it is sufficient to satisfy the requirements of an original contract. (*Willard vs. Bosshardt*, 68 Wis. 454; *Gray vs. Herman*; *Bray vs. Parcher*.)

6. While the fact that the original debtor is still liable will not prevent the oral promise from being an original undertaking if there is new and sufficient consideration passing to the promisor, (*Hoile vs. Bailey*; *Weisel vs. Spence*), still, the discharge of the original debtor, ought, as a matter of construction, prevent it from being a promise to pay the debt of another.

7. Where there is an existing debt and an oral promise to pay, without new and sufficient consideration passing to the promisor, it is void. (*Reynolds vs. Carpenter*; *Emmerick vs. Sanders*; *McDonnell vs. Dodge*; *Osborne vs. Farmer's Loan & Trust Company*; *Hooker vs. Russell*; *Clapp vs. Webb*; *Gray vs. Herman*; *Bray vs. Parcher*.)

8. Where there is an existing debt and an oral promise, though in form to pay the debt of the original debtor, the promise is valid if there is a new and sufficient consideration passing and beneficial to the promisor, whether from the promisee or original debtor, which consideration, benefit or advantage was the object of the promisor when making the promise and not merely incidental by reason of the

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promise. (*Dyer vs. Gibson; Young vs. French; Weisel vs. Spence; Clapp vs. Webb; Hoile vs. Bailey; Gray vs. Herman; Putney vs. Farnham; Wyman vs. Goodrich; Eagle M. & P. Machine Co. vs. Shattuck; Hewitt vs. Currier; Martin vs. Davis; Bassett vs. Hughes; Murphy vs. Gates; Clasgens vs. Silber; Hooker vs. Russell; Bray vs. Parcher; Twohy Mercantile Co. vs. Ryan Drug Co.*)

9. The fact that by reason of the oral promise, where consideration passes and is beneficial to the promisor, the original debtor is incidentally benefited, is no objection to the necessity of the rule of new and sufficient consideration passing to the promisor. (*Hoile vs. Bailey; Putney vs. Farnham; overruling Dyer vs. Gibson.*)

10. Where a debt is to be incurred and an oral promise guaranteeing its payment is made, exclusive credit not being given to the promisor, the debt itself is not sufficient consideration to take it without the statute.

11. Where there is an existing debt or where the promise is to pay a debt to be incurred, the exclusive credit not being given to the promisor, but he is considered a guarantor, if in writing and expressing a consideration, whether passing to the promisor, promisee or *original debtor*, the promise is not within the statute. (*Miami Bank vs. Goldberg; Young vs. Brown; Waldheim vs. Miller; Eastman vs. Bennett; Roundy, etc., vs. Baldwin; Cox Bros. vs. Milbrath; Scollard vs. Bach; Day vs. Elmore; Dahlman vs. Hammel; Jansen vs. Kuenzi.*)

12. Where the written promise mentioned in (11) does not state a consideration it is void. (*Commercial National Bank vs. Smith; Parry vs. Spikes; Taylor vs. Pratt; International Text Book Co. vs. McKone, 133 Wis. 200; Klee vs. Stephenson. 130 Wis. 505; Hutson vs. Field; Twohy vs. Ryan.*)

13. Where there is an existing debt and a written promise to pay, the consideration of the existing debt without a *new* consideration is not sufficient to take it without the statute. (*Bank of Commerce vs. Ross; Waldheim vs. Miller.*)

VICTOR H. GLANZ, '19.