plaintiff relying, &c., did loan £400 to Spooner and Cubitt on the security of the mortgage of said houses and land Allegation, non-payment of money when due; and that houses and land of much less value than sum lent, &c. Breach, that defendant did not discharge the responsibility of Spooner and Cubitt to plaintiff in respect of the loan, &c. The second count was substantially the same as the first, but stated the consideration for the defendant's promise to be a transfer of £100 stock by the plaintiff to Spooner and Cubitt. The third count alleged the consideration to be the loan of money generally to Spooner and Cubitt. The cause was tried at the Bristol Summer Assizes for 1858, when the following facts appeared in evidence: The plaintiff having the sum of £400 in the funds, was advised by the defendant to lend it on mortgage to two persons named Hook Spooner and William Cubitt, who carried on business as builders, upon the security of certain leasehold premises belonging to them; the defendant assuring the plaintiff that he would incur no risk, as the security was good for £600, and telling him that if Spooner and Cubitt would not take *less than £600 he himself* would advance £200 to make up the required amount. The defendant also promised to see Mr. Lyne, his solicitor, upon the matter, and shortly afterwards addressed the following letter to plaintiff:

ENFIELD HIGHWAY, *October* 21, 1856.

DEAR CHARLES,—I saw Mr. Lyne this morning, and I told him he had better call on you, as he seemed very anxious to have the mortgage completed, and I thought he offered very fair; but do as you please about it. *I will take any responsibility myself respecting it should there be any.*

W. MITCHELL.

Shortly after the receipt of this letter Mr. Lyne called on the plaintiff, and told him that Spooner and Cubitt would be content to take the £400, and the plaintiff consented to lend it. Accordingly plaintiff sold out the £400 stock, and advanced the proceeds to Spooner and Cubitt, upon the security before mentioned, at 6 per cent. interest —solely upon the faith of the defendant's letter of 21st October, 1856.

The interest was not paid when it became due, and the security turned out to be very inadequate, and the plaintiff sustained a considerable loss, and in order to recoup himself, sued the defendant.

It was objected, on the part of the defendant, that the evidence did not sustain the declaration, and the learned judge before whom the cause was tried being of that opinion, nonsuited the plaintiff, reserving him leave to move to enter a verdict (for such sum as should be assessed by an arbitrator to be chosen between the parties) if the court should be of opinion that there was evidence to support the contract alleged in any count of the declaration; the court to be at liberty to draw such inferences from the facts as a jury might have drawn.

A rule was accordingly obtained on the part of the plaintiff, to which cause was shewn. During the argument of the rule, on the part of the plaintiff's counsel, the expressions which fell from the judges of the Common Bench, on the construction of the new statute, deserve to be noted. Byles, J., said: "The statute does not make a promise good which was not good before. Can the verbal consideration be imported into the promise?" "You want to incorporate the parol consideration into the written promise. This you cannot do" "Formerly the consideration *in writing* might be looked at, not only to support but to explain the promise. But the *parol* consideration cannot be looked at to explain the promise." Cockburn, C. J., said: "The statute intended to exclude parol testimony as to the terms of the promise itself. The construction you contend for would raise a conflict of parol testimony as to the limit of the guarantee, which would be getting on the debatable ground from which the statute meant to exclude you. Is not the Statute of Frauds inexorable in that?"

Williams, J., who afterwards delivered the judgment of the court, said: "The question in this case is, whether in a letter written by the defendant to the plaintiff relating to a proposed mortgage, the following words are a sufficient guarantee within the fourth section of the Statute of Frauds:

"I will take any responsibility myself respecting it, should there be any."

"It will be observed that at the time the letter was written no mortgage existed. The letter is silent as to the sum to be advanced, as to the rate of interest, as to the nature of the security, whether a mortgage in fee or for years, and as to the land to be charged. The letter if read by itself, without reference to any previous conversations, would be a promise to be responsible for any sum of money, however large, at any rate of interest, secured by any kind of mortgage, on any land, with any title. That, however, would be an unreasonable construction, and is not its true meaning. It evidently refers to previous conversations in which these particulars were supplied. The whole promise, therefore, is not in writing, as the statute requires it should be. It cannot be made out without reference to previous conversations.

"The recent statute 19 & 20 Vic., cap. 97 sec. 2, it is true, abrogates the rule laid down in *Wain* v. *Walters*, 5 East. 17, and enables a party to give parol evidence of the consideration for a guarantee. But a consideration formerly expressed in writing discharged two offices—it sus-