

There is no dispute between the parties as to the services rendered in connection with these various items, but the defendant rendered medical services to the father and mother of John Earl Halliwell, deceased, amounting to \$32.90, also to Lawrence Halliwell, brother of the late John Earl Halliwell, amounting to \$28.50, and also to the deceased sister, Charlotte Halliwell, amounting to \$50.25, making in all \$111.65, which he contends should also be set off against the claim of the plaintiff, which would then leave a balance of \$45.49, and which sum the defendant acknowledges as being due, and brings the same into Court with his statement of defence.

The whole issue, therefore, is in relation to these three items for medical services rendered by the defendant, Dr. Zwick, to the relatives of the deceased, the defendant alleging that the deceased J. Earl Halliwell requested him to attend these members of the family, and promised to pay the bill.

It is argued by the counsel for the plaintiff that a promise to pay is not necessarily implied in a request that a benefit be conferred upon a third person, and his argument in this regard is quite correct; but the defendant in this case goes further and says that there was a distinct promise to pay. The plaintiff's counsel says that, even though there was a promise to pay, it was of such a nature that it should have been in writing, under the Statute of Frauds, and there was no writing. The defendant, Dr. Zwick, swears that the deceased Halliwell requested him to attend these various persons, and said he would pay, or, as Dr. Zwick expressed it in another portion of his evidence, Halliwell said to charge it to him and he would pay it.

I take it from the defendant's evidence that at the time this promise was made, if made at all, in connection with each of the persons attended, there had not yet been any service rendered to that person. In relation to this case the rule as to whether the Statute of Frauds applies or not, is well laid down in *De Colyar on Guarantees* at p. 67: "At the time the promise is made there must be some person actually liable in the first instance to the promisee for the debt, default, or miscarriage guaranteed against, or, at all events, the creation of such liability at some future time must be contemplated as the foundation of the contract." Most of the cases cited by the plaintiff's counsel on this point are under that rule, but in each case the thought is there that