and chattels, in the way of his (plaintiff's) business of a woollen draper, on credit; that plaintiff had, at the request of Andrew Little, consented to do so, provided defendant would guarantee the payment of the price of the goods so to be sold and delivered to Andrew Little, of which defendant, before and at the time of the making of the promise, had notice; that afterwards, and before Andrew Little became indebted to plaintiff for dry goods, defendant, by writing addressed to the plaintiff, promised in the words following: "I hereby guarantee the payment of any sum or sums of money *due* to you from Andrew Little—the amount not to exceed at any time the sum of £100;" that afterwards, plaintiff confiding, &c, supplied goods to Andrew Little for reasonable prices, amounting to £100, and thereby allowed Andrew Little to become indebted to him in £100; that Andrew Little had not paid, &c. Demurrer, on the ground that the state of circumstances contemporaneous with the making of the promise could not be shewn to supply consideration. *Held*, that the circumstances stated in the declaration might be looked at to explain the meaning of the writing. (*Bainbridge* v. *Wade*, 16 Q. B. 89. See also *Powers* v. *Fowler*, 4 El. & B. 511.)

The leaning of the judges in this case (*Bainbridge* v. *Wade*) was only a bending to the requirements of the age. It was a great departure from the rule established with so much strictness in the old cases. Lord Ellenborough, if alive, would have no hesitation in pronouncing it contrary to the law as understood in his time. But law is progressive; and even judges, with all their desire to adhere to old established rules, at times are somewhat influenced by the spirit of the age in which they live, and, as far as possible, constrained to administer the law as suited to the requirements of that age. Such, we think, was the influence which so sensibly affected the judges in *Bainbridge* v. *Wade*. Such is the influence which has since induced the Legislature both of Great Britain and of Canada to relax the rule of construction placed by Lord Ellenborough and others upon the fourth section of the Statute of Frauds.

On 29th July, 1856, was passed the Imperial statute (19 & 20 Vic. cap. 97) entitled, "An Act to amend the laws of England and Ireland affecting Trade and Commerce." Section 3 enacts that "No special promise to be made by any person after the passing of this act to answer for the debt, default or miscarriage of another person, being in writing, and signed by the party to be charged therewith, or by some other person by him thereunto lawfully authorized, shall be deemed invalid to support an action, suit or other proceeding to charge the person by whom such promise shall have been made, by reason only that the consideration for such promise does not appear in writing, or by necessary inference from a written document."

In England this enactment was found to give much satisfaction, and the Legislature of Canada, last session, ventured to copy it.

It is a pity that the copy made was not exact in all its terms. The variance, as we shall presently see, is, however more in grammar, than in substance or sense.

Our enactment reads as follows: "No special promise to be made after the passing of this act to answer for the debt, default or miscarriage of another person, being in writing, and signed by the party to be charged therewith, or some other person by him lawfully authorized, shall be deemed invalid to support an action, suit or proceeding to charge the person by whom such promise *has* (Imperial act, "shall have") been made, by reason only that the consideration for such promise does not appear in writing, or by necessary inference from a written document."

We take it that the two enactments are, in law, identical. We take it, also, that the meaning of each is tolerably clear. The intention is simply to dispense with the necessity of stating consideration on the face of the writing. The special promise (and not the agreement involving the consideration) is all that is now required to be in writing. But still there must be, in fact, a good and valid consideration for the promise to make it binding. The statute is not intended in this respect to alter the law. It is only intended to alter the mode of proof. Before the statute the consideration could only be proved by the writing. Now it may be proved *dehors* the writing. But still it must, in order to make the promise binding, be proved either in the one way or the other. If not proved either way—if not, in truth, existing—then the promise, as before the Statute of Frauds, is simply a *nudum practum*. The law of contracts is not altered. The law of evidence is altered.

This would be the interpretation which one disposed to apply the remedy to the mischief intended to be remedied would place upon the act of Parliament. Strange to say, however, in the only case which has been decided under the English statute, and to which we are about to refer, apparently a much less liberal interpretation was placed upon it.

Plaintiff had three counts in his declaration. In the first he stated that in consideration he would, at the request of defendant, lend £400 to one Hook Spooner and one William Cubitt, on mortgage of certain houses and land belonging to them, defendant promised plaintiff to take on himself any responsibility by the said Spooner and Cubitt incurred by reason of the loan, and to protect plaintiff from all loss by reason of the loan. Averment, that