

ment embraces in it real estate or something which would bring it within the Statute of Frauds, even be in writing, but may be by word of mouth."^{29a} It may, however, be reasonably argued that the above remarks of Lord Blackburn were mere obiter dicta and unnecessary.

In April last, Horridge, J., had to decide a point which was not exactly covered by the above authorities. The case in which this point arose was the *West Yorkshire Darracq Agency Limited (In Liquidation) v. Coleridge*.³⁰ The jury found that a verbal contract had been made between the liquidator and the directors of the plaintiff company that if the directors other than the defendant would forego their fees the defendant would also do so. The defendant contended that this contract was "res inter alios acta" so far as the company was concerned, but the learned judge gave judgment for the company, and relied mainly on the observations of Kelly, C.B., in *Slater v. Jones* which are quoted above. It is respectfully submitted that this decision is correct, but that the reasons given by Horridge, J., are very far from being adequate to support it. The learned judge treated the company as having been a party to the agreement through the liquidator, and held: (a) that the company gave no consideration; and (b) that the agreement was binding on the company; but he took care to add that no point had been taken as to the power of a liquidator, under the Companies (Consolidation) Act, 1908, or otherwise, to bind the company by such an agreement.³¹

This case strains the doctrine of consideration to breaking point, and leads one to agree with Sir William Markby who contends that an express undertaking of a liability ought to be held binding "not upon the stupid ground that a moral con-

29a. Cf. Sir John Romilly in *Pfleger v. Broigne*, 1860, 28 Beav. 391.

30. 1911, 2 K.B. 326.

31. Having regard to s. 214 of the Act, it may well be doubted whether the company was bound by the agreement; but cf. the judgment of Lord Alverstone, C.J., in *The Cyclemakers' Co-operative Society v. Sims*, 1903, 1 K.B. 477; and James, L.J., in *Re English & Scottish Marine Insurance Co.*, 1870, 23 L.T.N.S. 685. The report of this case in 5 Ch. App. 737, does not contain James, L.J.'s remarks on this point.