grounds, without special reference to any one of the classes of transactions particularly dealt with in the section. An agreement unenforcable by the statute may be proved by way of defence to an action: *Lavery* v. *Turley*, 30 L.J. Ex. 49, or to excuse a trespass: *Carrington* v. *Roots*, 2 M. & W. 248; *Wood* v. *Manley*, 11 A. & E. 34, or to show that a cause of action has been barred by accord and satisfaction; *Massey* v. *Johnson*, 1 Ex. 241; and if a defendant in his pleading admits the agreement, the statute no longer applies even as against his heir: *Attorney-General* v. *Day*, 1 Ves. Sr. 220. Secondly, the statute has no application to agreements which by fraud have not been reduced to writing: *Whitechurch* v. *Bevis*, 2 Bro. C.C. 565.

We will next deal separately with the different classes of transactions which fall within the fourth section, and firstly of promises to answer for the debt, default or miscarriage of another. Any verbal guarantee is so far good that money paid under it cannot be recovered: *Shaw* v. *Woodcock*, 7 B. & C. 73. In the exercise of their summary jurisdiction over their own officers the Superior Courts will enforce against a solicitor a parol guarantee given in a cause: *Re Greaves*, 1 Cr. & J. 374 n. Contracts of indemnity are not within the statute: *Re Hoyle*, [1893] 1 Ch. 84. *Guild* v. *Conrad* (1894), 2 Q.B. 885, which is a decision of considerable importance as the line of distinction between a guarantee and an indemnity was said by Lord Esher, M.R., to be a very nice question: *Sutton* v. *Grey* (1894), 1 Q.B. 287. The statute has no application to an agreement of novation as where two or more agree to be answerable for what was formerly the debt of one alone: *Ex p. Lane*, 1 DeG. 300.

It was formerly held that the statute did not apply to a guarantee given before the creation of the principal's liability: *Mowbray* v. *Cunningham*, cited in *Matson* v. *Wharam*, 2 T.R. 808. But this is not now the law. A debtor's promise to pay the debt to the assignee of the creditor is not within the statute, though a debt of the creditor to such assignee be thereby discharged, because it is a promise to pay the debtor's own debt: *Hodgson* v. *Anderson*, 3 B. & C. 842. Promises that