

CHAPTER IV.

GUARANTY AND SURETYSHIP.

107 Guaranty and Suretyship.

The kind of promise given by one person to another to answer for the debt, default or miscarriage of a third party that the courts will enforce was settled by that famous Statute of Frauds and Perjuries over three hundred years ago.

108 Verbal Recommendations.

The representation or assurance made by one person concerning the character, conduct, or credit of another by which such person obtains goods or credit does not bind such person as a surety, *unless it is in writing*. R.S.O., Chap. 146, Sec. 7. It is the same in all the Provinces.

109 A Verbal Promise that Binds.

There are oral or verbal promises to make good the debt of another which are binding in law. For instance:

A person goes with his hired man to a store and says to the merchant, "Give this man goods (naming the amount), and I will see it paid," or, "I will be responsible." This is binding when given merely by word of mouth, if the sum does not exceed the amount for which an oral agreement is binding in that Province, because it is a promise to pay the debt himself, and not answering for the debt of another. It is his own order, and he virtually tells the merchant to charge the goods to him direct, which the merchant should do in such case, although the goods are for the benefit of the other party. It is a "valuable consideration," and makes the contract binding if the goods are taken.

Again, if A were to go to B and say, "If you do not press C for your claim for one month, at the end of that time I will see that you are paid." This would also be a direct promise by A to pay the debt, and would therefore be binding without being put in writing.

The extension of time given is a "sufficient consideration" to constitute a binding contract.

110 A Verbal Promise that Does Not Bind.

But if instead of using the form of expression employed in the preceding section, suppose he were to say to the merchant, "Give this man goods up to (naming the amount), and if he does not pay you by such a time (naming date), I will myself," or "send the bill to me." This would be worthless spoken by word of mouth, because it is "answering for the debt or default of another," and therefore utterly void unless put in writing. Even if there were witnesses it would still be void, according to that famous "Statute of Frauds and Perjuries," which has been good law since 1678. It leaves the debt on the other party, the guarantor only agreeing to pay in case the debtor fails to do so. Every form of wording that may be used where this is the effect, is utterly worthless, unless put in writing.

114 Letters of Recommendation.

Great care should be taken in the wording of a letter of recommendation where financial obligations are to be created or business relations formed, if