tained the promise, and might also explain it. Now, however, parol evidence, though it may supply the consideration, cannot go further and explain the promise.

"We therefore think that the ruling of the learned judge at the trial was correct, and the rule must be discharged." (*Holmes* v. *Mitchell*, 7 C. B., N. S., 361.)

Supposing this construction of the recent statute to be correct, it follows that, notwithstanding, the statute it will be safer to express the consideration in the writing, as hitherto. The want of the consideration may leave the promise incomplete, and without explanation. And, it is clear from the decision just referred to, that unless the promise be complete on the face of the writing by reference to the consideration, expressed or otherwise, that parol evidence will not be received to aid it, and so the promise will fail.

Thus it will be seen that the Legislature, according to the decision of the Court of Common Bench, while removing one difficulty in the way of the binding effect of guarantees, have raised up another which, in all probability, may neutralize the good effect which it was intended the statute should have. The statute says that the consideration need not be stated in the writing. In few cases will the promise be found complete without reference to the consideration. But the court says that unless the consideration appear on the face of the writing, no reference can be made to it as explanatory of the promise, because the promise entire and complete must appear on the face of the writing. Technically, perhaps, the court is right. But if right, it is plain that more legislation is required to make guarantees—what they are designed to be—binding engagements to pay the debts of others. In general they are contained in letters written by and accepted by men fully cognizant of the requirements of common sense, but entirely ignorant of the refinements of the courts in the construction of the Statute of Frauds, and the recent explanatory act to which we have at so much length referred. The necessity for stating consideration was a refinement which had the effect of defeating numberless guarantees: and so the Legislature has interfered and destroyed it. In its place, however, another refinement has sprung up, which promises to rival the defunct refinement in destructiveness. The difficulty of making common, or, more correctly, statute law harmonize with common sense is, it will be seen, by no means trifling. Those interested in simplifying the laws regulating trade and commerce, must again try their hands at the work of legislation on the important subject of guarantees. The law of England still is too subtle for ordinary comprehension.

In several of the United States of America, the fourth section of the Statute of Frauds has been much more liberally construed. The question for the necessity of the consideration appearing on the face of the writing, came up in 1821, in *Packard* v. *Richardson*, 17 Mass. 122. In that case Chief Justice Parker entered into an elaborate discussion of the question, and arrived at a conclusion the reverse of that of Lord Ellenborough, in *Wain* v. *Walters*. He pointed out that for more than a century after the passing of the Statute of Frauds, it had in England been held sufficient to prove the consideration by parol evidence, and decided that to be the true construction of the act. His decision is now a part of the revised statutes of Massachusetts, viz.:—"The consideration of promise, contract or agreement need not be set forth or expressed in the writing signed by the party to be charged thereunto, but may be proved by any other legal evidence." (Revised Stat. Mass. p. 527.) The doctrine propounded by Chief Justice Parker, in Massachusetts, has been followed in Maine, Vermont, Connecticut, North Carolina, Ohio, Missouri, Texas and New Jersey.

It is a subject for regret that any different doctrine ever prevailed in England. The impolicy of it is now very generally admitted; but the difficulty of getting rid of it is greater than might be expected. The courts must either construe the recent amending act with more liberality than the Judges were disposed to do in *Holmes* v. *Mitchell*, or else the legislature must again interfere and strike a blow of a more decided character than they appear to have done.

LAW SCHOOL.

We are informed that in our recent announcement of books to be read for scholarships there is a mistake. In the first year Williams on *personal* property, and not Williams on real property, is the book intended. Students will please make the necessary correction.

JUDGMENTS.

ERROR AND APPEAL.

Hamilton v. *Holcomb*.—Appeal from Common Pleas. Case reported 12 U. C. C. P. 38. Appeal dismissed with costs (McLean and Draper, C.J.J., dissenting.)

Rutherford v. *Hill*.—Appeal from Chancery. Case reported 9 Grant 207. Appeal dismissed with costs (Spragge, V. C., dissenting.)

Sexton v. *Paxton*.—Appeal from court Queen's Bench. Case reported 21 U.C Q B. 389. Appeal dismissed with costs (Draper, C. J., and Morrison, J., dissenting.)

QUEEN'S BENCH.

Present: McLEAN, C. J.; WILSON, J.

June 15, 1863.

Kelly v. *Moulds*.—Judgment for plaintiff, on demurrer.

Robison v. *Flanigan*.—Judgment for defendant demurrer to fifth plea, and for plaintiff on the other pleas. Leave to apply to amend on affidavit.