

"demand is necessary to charge the debtor, or unless the surety has expressly stipulated that such demand shall be made."

I will assume all this to be true as a general proposition. If you guarantee the payment of a specific debt at a definite date, it may very possibly be your duty to see that it is duly paid at that time. And if that is your duty, no demand either on you or the principal debtor may be necessary to found an action. And if action can be brought without any such demand, I suppose the Statute of Limitations would begin to run from the date when payment should have been made. But I cannot help thinking a continuing guarantee stands on a different footing. If it does not, the decision in *Hartland v. Fukes* seems inexplicable. In another case of a continuing guarantee, *White v. Woodward*, in 1848, it was contended that the guarantor had no notice of the supply of goods to the person whose debt was guaranteed, and no notice of non-payment by him, until the demand for payment was made upon him, the guarantor. It is true that Chief Justice Wilde said: "The defendant was *ipso facto* liable upon the other's failure to pay," but in his judgment he said that if there was any matter of discharge arising from want of notice or otherwise, it ought to have been properly set up, showing he was not very confident of his earlier opinion. And in that case there apparently was a demand from the guarantor before action.

I must also admit that in late cases where a guarantor has covenanted by deed to pay on request, the necessity for a request has been based on the presence of those two words "on request."

But now fortified by *Hartland v. Fukes*, let us look at the matter of a continuing guarantee given to a bank for advances or overdrafts from a business point of view. What is the object and intention of the parties? Surely this, that the customer shall obtain an effective working credit, that the banker shall get a profit out of the money lent by charging interest upon it, and that the guarantor shall ensure, within specified limits, that the banker shall not be a loser by the transaction. The guarantee itself recognizes this by provisions as to interest and charges.