Pollock and Wright, Possession in the Common Law 13 (1881); Holmes, The Common Law 216 and 220 (1881). In the safety deposit cases, the fact that each party retains one of two keys, both of which must be used jointly to open the box, manifests both a common intent and power to exclude third parties. On the other hand, neither party has power to deal affirmatively with the contents of the box without the cooperation of the other. Thus, there is no transfer of possession to the bank, although the bank's proximity to the contents and its control of the means of access afford it a better opportunity to acquire, by force, the power to use the contents. As between the bank and its customer, all that can be said is that neither fulfills the three requirements for possession. In the relation of these two to third persons, no more can be said than that possession is held by them jointly.

The conclusion in the instant case, that there was no transfer of possession to the bank, is not only consistent with the foregoing analysis of possession, but is probably the result of a sound exercise of statutory construction. In requiring that the subject matter must be "in possession or under the control" of the garnishee, the Minnesota legislature probably intended to make available to garnishment process only property to which the garnishee had liberty of access and with which he could deal independently and without the defendant-debtor's cooperation. The court suggests that the legislature did not intend to allow garnishment in cases where the property in question could be reached by other means. Presumably, the court had reference to the statutory provisions in Minnesota for execution by judgment creditors and for attachment of a debtor's property. 2 Mason's Minn. Stat. §§ 9419, 9342 (1927).

Suretyship—Estoppel in Pals—The Main Purpose Doctrine—Bases of Liability for Oral Promise—[Federal].—The defendant corporation contracted to buy a grain company that owed the plaintiffs $80,000. The defendant's president stated orally to the plaintiffs that his corporation had taken over the grain company and would see that the debt was paid, if they would continue business relations and not press the account. The plaintiffs accordingly continued dealings with the grain company. Thereafter the corporation rescinded its contract to purchase without notice to the plaintiffs, the grain company went into bankruptcy, and the plaintiffs then sued the defendant corporation to recover the amount of the indebtedness. Held: that the defendant could not plead § 59(1) of the Statute of Frauds (the requirement of a written promise to answer for the debt of another), because (1) the defendant made the promise primarily for its own benefit and (2) was estopped by the plaintiffs' detrimental reliance upon its statements. Wright v. Farmers' National Corp., 74 F. (2d) 425 (C.C.A. 7th 1934).

While admitting the application of the Statute of Frauds to secondary or collateral promises, the courts have nevertheless been able to find several grounds for holding oral promises in certain situations not subject to its requirement of a written memorandum. See Alphin v. Lawman, 115 Va. 441, 79 S.E. 1029 (1913) (promise interpreted as one of indemnity); Gibbs v. Blanchard, 15 Mich. 292 (1867) and Bryant v. Panter, 91 Ore. 686, 178 Pac. 989 (1919) (promisor treated as a co-debtor); Tannhauser v. Shea, 88 Mont. 562, 295 Pac. 288 (1930); 39 Harv. L. Rev. 401 (1926) (promise amounting to a novation). And so oral promises found to be primary or original undertakings have been enforced. Emerson v. Slater, 63 U.S. 28 (1859); Grant v. Kinney, 117 Ohio St. 362, 159 N.E. 346 (1927); 1 Williston, Contracts § 463 (1920). The court in the principal case utilized the main purpose doctrine to enforce an oral promise. The
basis of this theory is a finding that the main or leading purpose of the transaction was to secure a direct benefit to the promisor. The promise is then considered an original undertaking making the promisor primarily liable, the debt his own. *Kale v. Bankamerica Agricultural Credit Corp.*, 2 Cal. App. (2d) 113, 37 P. (2d) 494 (1934); *Richmann v. Beach*, 201 Iowa 1167, 266 N.W. 806 (1936); Arant, Suretyship § 36 (1931); Arnold, The Main Purpose Doctrine and the Statute of Frauds, 10 Cornell L. Q. 28 (1924). It is questionable whether the doctrine is consistent with the purpose of the Statute of Frauds to prevent fraud and perjury. The benefit in the present case, for instance, was the assurance to the promisor that the business it intended to buy would not be thrown into bankruptcy. Since this benefit would be required by a prospective purchaser of a business, it would neither seem unusual for a creditor to suggest, nor difficult for him to establish by perjury, that the purchaser had attempted to assure the benefit by promising orally to pay the debts of the business he was buying. In similar situations the oral promisor is not made liable simply by proof that benefit would result to him. It was so held where stockholders orally promised to pay the corporation’s debts (*Edwards v. Bryan*, 214 Ala. 441, 108 So. 9 (1926); *Gennett v. Lyerly*, 207 N.C. 201, 176 S.E. 275 (1934)) and where an owner orally promised to pay the debts of a building contractor working on his property (*Witschard v. A. Brody & Sons*, 257 N.Y. 97, 177 N.E. 385 (1931); *Houseley v. Strawn Merchandise Co.*, 201 S.W. 864 (Tex. 1927)). The main and leading purpose doctrine is no more satisfactory in the present case than in these two classes of cases, in which it has apparently been abandoned. The New York courts view prospective benefits to the promisor only as evidence that may or may not prove an original undertaking. *While v. Rintoul*, 108 N.Y. 222, 15 N.E. 318 (1888); *Richardson Press v. Albright*, 224 N.Y. 497, 121 N.E. 362 (1918); *Witschard v. A. Brody & Sons*, 257 N.Y. 97, 177 N.E. 385 (1931); *Burdick, Suretyship and the Statute of Frauds*, 20 Col. L. Rev. 153 (1920). In their opinion, before a promise is declared within the main purpose doctrine there should be a clear showing, in the light of all the surrounding circumstances, that the parties intended the promisor to become primarily liable as a principal debtor.

The other ground of decision in the present case is the doctrine of estoppel in pais. A person will not be heard to deny a statement of fact made by him, with the intention of influencing the conduct of another, who has in fact relied on the statement and will suffer detriment if legal effect is given to the facts as they really were and not as represented. *Lusitanian-American Development Co. v. Seaboard Dairy Credit Corp.*, 1 Cal. (2d) 121, 34 Pac. (2d) 139 (1934); *Trustees of Schools v. Village of Cahokia*, 357 Ill. 538, 192 N.E. 565 (1934); Bigelow, Estoppel 489 (6th ed. 1913). It is frequently held on various theories that a corporation which purchases all of the assets of another corporation becomes liable for the transferor’s debts. See 44 Harv. L. Rev. 261 (1930).

In the present case, when the defendant represented that his corporation had bought out the grain company, there may be said to have been an implicit representation that his company would be liable to the plaintiff. See *Gude Co. of N.Y. v. Kestenbaum*, 169 N.Y. Sup. 11 (1918). If the facts had been as thus represented, the Statute of Frauds would not have been applicable, for the debts would have been the defendant’s own. Now the defendant is precluded, not from resisting a promise unenforceable under the statute, but from disputing the existence of facts that place its conduct beyond the scope of the statute. This decision is therefore better accounted for by the doctrine of estoppel in pais than by the “main purpose” doctrine.