

permitting the appellants to shew that this contract was abrogated by a new contract. The offers of proof on this subject consisted only of oral testimony tending to shew that the parties had abrogated the contract by making a new one. No competent evidence was offered to shew that any new contract having any effect upon the original one was made in writing. This original contract being for the conveyance of an interest in real property, it was, of course, required by law to be in writing. *Nichols v. Opperman*, 6 Wash. 618, 34 Pac. 162; *Brewer v. Cropp*, 10 Wash. 136 Pac. 868; *Swash v. Sharpstein*, 14 Wash. 426, 14 Pac. 862, 32 L.R.A. 796; *Graves v. Graves*, 48 Wash. 664, 94 Pac. 481.

"Counsel for appellants invoke the general rule that a written contract may be abrogated or modified by a subsequent parol contract made between the same parties, citing *Tingley v. Fairhaven Land Co.*, 9 Wash. 34, 36 Pac. 1098. This rule, however, does not authorize the abrogating of a contract by a new parol contract when the original contract is by law required to be in writing. Such a contract cannot be abrogated or rescinded by a parol contract, *except such new parol contract is accompanied by acts of part performance sufficient to take it out of the requirements of the law that it shall be in writing.* *Spinning v. Drake*, 4 Wash. 285, 30 Pac. 82, 31 Pac. 119.

"It is suggested that the offers of proof included a shewing of part performance of the new contract. The only acts of part performance which we regard as at all referable to the new contract sought to be shewn was payment of the consideration therefor, but this of itself is not sufficient to take the place of the requirement of the law that such contract shall be in writing."

The next time the Washington court was called upon to pass on this question was in the case of *Gerard-Fillio Co. v. McNair*, 68 Wash. 321. In that case, the plaintiff declared on a written contract for commissions for the sale of real property, which under the Statute of Frauds was required to be in writing in order to be valid. The defendant pleaded in defence an oral modification of the written contract, or rather the discharge of the written contract by a subsequent oral contract entered into while the written contract was still executory and tender of