

"After the contract has been reduced to writing, the parties, in cases not within the Statute of Frauds, may, at any time before the breach of it, by a new contract not in writing, either waive, dissolve, or annul the former contract, or add to, or subtract from, or vary, or qualify the terms of it, and thus make a new contract."

In the *Hawkins* case the following language was used:—

"Subsequent oral agreements between the parties to a written contract not falling within the Statute of Frauds, if founded on a new and valuable consideration, may, when made before the breach of the written contract, have the effect to enlarge the time of performance specified in the written instrument, or may vary any other of its terms, or may waive and discharge it altogether."

In the *Chesapeake & O. Canal Co.* case the court said:—

"The terms of a contract under seal, where the Statute of Frauds is not involved may be varied by a subsequent parol agreement, express or implied."

It is to be noted that the authorities mentioned agree, that to discharge a written contract within the Statute of Frauds by a subsequent agreement between the parties, such subsequent agreement must be of equal dignity with that sought to be discharged, or, in other words, the new agreement must be such a contract as would be valid and capable of enforcement. No exception seems to have been recognized by any of them. Some courts, however, do qualify the rule to the extent that there may be sufficient performance under the new oral agreement as to take it without the Statute of Frauds, or, at least, to make it inequitable to allow a party to stand upon the written agreement after a part performance of the oral modification. Such seems to be the rule adopted by the Washington Supreme Court. The case of *Thill v. Johnston*, 60 Wash. 393, was an action brought to compel specific performance of a contract affecting real property, which, under the state statute, must be in writing. The defendant sought to shew that the written contract had been abrogated by a new oral contract. In holding that this was not permissible, the court said:—

"It is contended that the learned trial court erred in not