

ing to prevent the other alternative being enforced, but in the case of the alternative, unenforceable by reason of the Statute of Frauds, there is the distinct provision of the statute that no action shall be brought on such an agreement, and the practically uniform trend of the decisions on the subject seems to be that that means no action in any shape or form, either directly or indirectly. (See authorities above cited, and also *Dung v. Parker* (1873) 52 N.Y. 494; *Dumphy v. Ryan* (1835) 116 U.S. 496). In *Carrington v. Roots* (1837) 2 M. & W. 248, Lord Abinger said, "But wherever an action is brought on the assumption that the contract is good in law, that seems to me to be in effect an action on the contract." *McCollum v. Jones* (1827) Tay. (U.C.) 442.

Were there a similar statute, providing that no action should be brought on agreements such as that in *Stevens v. Webb* (Sup.) (to surrender a person to the sheriff) it might perhaps be that an alternative agreement in such a case would, *pari ratione*, be held nugatory also. It is worthy of attention also that in the present case the contract is not exactly in the form of an even alternative, but is a contract to purchase the realty (which is plainly the main object of the contract) with a provision added, "and in case Campbell refuses to carry out the part assigned to him in accepting the title to said property, he will have to pay Mrs. Mercier a like sum of \$300."

The net result of the matter seems to be that there are undoubtedly contradictory currents of authority on the subject.

On the one side there is the array of cases above mentioned, a no inconsiderable one, and the statements of numerous text-writers founded thereon, while on the other the main authorities seem to be *Couch v. Meeker*, 2 Conn. 308 (Sup.), and the case under discussion, while some countenance is undoubtedly lent to the same doctrine by the case of *Knapp v. Carley*, 3 O.W.R. 940. The case under discussion is referred to in *Kinzie v. Harper*, 15 O.L.R. 582, which however is on a different point.

The point involved is undoubtedly one of great practical importance; it has already, as above indicated, been the subject