"If a person promises to do one of two things in the alternative, and at the time of making the contract one of them is impossible, as a general rule he must perform that which is possible." Leake on Contracts, 4th ed., page 501, and again, "When a contract is in the alternative . . . if one branch of the alternative cannot be performed the promissor is bound to perform the other." Chitty on Contracts 15th ed., pages 700 to 701.

But is there not room for question whether the cases referred to (*Goodrich* v. *Nichols*, Sup. et al.), are in fact founded on the supposed doctrine as above stated? Is it not a somewhat different doctrine that forms their basis? A doctrine to the effect that in case of alternative promises, if one cannot be enforced *by reason of the Statute of Frauds*, the other cannot be enforced. That would seem to be an entirely different proposition, and one which seems to be supported by a very respectable line of authority: for instance, we find it stated in the English and American Encyclopædia of Law, 1st ed., vol. 8, page 633, as follows:—"Where an agreement is in the alternative, if one alternative is bad by the statute, no action can be maintained on the agreement, although the other is good. Thus an oral agreement by sons with their father to convey certain land to a sister, or, in default of conveyance, to pay her a certain sum of money is wholly bad. *Patterson* v. *Cunningham*, 12 Me. 506." In addition to the cases above cited in support of this doctrine (*Goodrich* v. *Nichols*, *Rice* v. *Pett*, etc.), see also *Howard* v. *Brown*, 37 Ohio 402; *Van Allstine* v. *Wimple*, 5 Cow (N.Y.) 162.

The reason for this doctrine would seem to be that to allow the enforcement of the apparently unobjectionable alternative would be in effect to allow enforcement of the alternative within the statute, and especially would this be the case when the former alternative was merely the payment of a sum of money conditioned on the breach of the latter alternative.

It will be seen that the distinction between the two doctrines is marked. In the case of an alternative agreement which is simply unenforcible, as in the case of the undertaking to re-deliver a person to the sheriff above referred to, there is noth-