

the purchaser refuse to take it, no action will lie against him to recover the loss sustained upon a second sale to another party; this could be done, manifestly only upon the ground that he was originally legally liable to take and pay for the land himself. (*Baker v. Jameson*, 2 J.J. Marsh (Ky.) 547; *Carmack v. Master-son*, 3 Stew. & P. (Ala.) 411. But, perhaps, if there were circumstances of deceit in the case, the plaintiff might recover in an action on the case for the deceit. See *Kidder v. Hunt*, 1 Pick. (Mass.) 328. Nor will a discharge from performing a verbal contract within the statute be a sufficient consideration to support another engagement. No action whatever could have been maintained against the defendant for any breach of that contract. A discharge from it, therefore, is of no use to him. *North v. Forest*, 15 Conn. 400; *Shuder v. Newby*, 85 Tenn. 348. But see *Stout v. Ennie*, 28 Kansas 503.) So, an engagement to forfeit a certain sum of money in case of failing to perform another engagement which, within the Statute of Frauds, could not itself be enforced, cannot be enforced by the party to whom it is made. (*Goodrich v. Nichols*, 2 Root (Conn.) 498; *Rice v. Peet*, 15 Johns (N.Y.) 503. But see *Couch v. Meeker*, 2 Conn. 308.)¹ Also paragraph 152 at page 187 as follows:—

“A class of contracts to which allusion has been heretofore made, namely, those in which a party promises to do one of two or more things, the statute applying to one of the alternative engagements, but not to the others, is sometimes referred to the head of contracts in part affected by the statute. It is needless to dwell upon the question whether they are properly so referred. It is manifest that of such alternative engagements no action will lie upon that one which, if it stood alone, could be enforced as being clear of the Statute of Frauds, because the effect would be to enforce the other; namely, by making the violation of it the ground of an action. (*Van Allstine v. Wimple*,

1. In *Couch v. Meeker* A. gave his note to B. upon condition that “A. having this day bargained his . . . farm to B. Now if A. stands to the bargain, the note is to be void; if not it is to stand in full force.” The jury found for the plaintiff, and this verdict was allowed to stand, though admittedly the contract for the sale of the land could not have been enforced.