
*ORAL MODIFICATION OF CONTRACTS REQUIRED BY
THE STATUTE OF FRAUDS TO BE IN WRITING.*

An ever-recurring question met by practitioners is: When may a written contract be modified, abrogated or discharged by parol, and when may it not? The question most frequently arises in connection with the trial of a cause involving a written contract which one party to the litigation seeks to vary or modify by parol testimony that would contradict the plain provisions of that contract. In such a case the rule is pretty well established that a party will not be heard to contradict the terms of the written agreement. In cases where the meaning of the contract is ambiguous, the court will receive parol testimony, not for the purpose of contradicting any portion of it, but in aid of it, by placing before the court evidence from which may be gathered the real intention of the parties. Because of the frequency with which these rules are applied, they have become too elementary to require citation of the legions of cases that support them.

From a consideration of the cases in which these rules are applied, it at once becomes apparent that the contracts involved are executed agreements. They are instances where one party to the written agreement has performed the stipulations required of him and is seeking to enforce his rights thereunder as a result of his performance, or where one party has offered and tendered performance and is claiming the benefits of an executed contract. Another phase of this question as to oral modification of written agreement is, May parties to a written contract modify, abrogate or discharge that contract while still executory by a subsequent agreement not in writing? In other words, can one party to a written contract enforce the provisions of that contract, when, before it is executed, the parties make a new agreement about the same subject matter, which new agreement is not reduced to writing? These seem simple questions, and yet they have arisen a considerable number of times in various jurisdictions, and the decisions have quite distinctly ranged themselves into two classes, depending upon the nature of the written contract which forms the subject of the controversy. The classification made by the