

tion. Save as to this, the operation of the statute is the same in law and in equity. See *Emmet v. Dewhurst*, 3 MacN. & G. 597.

*Goss v. Lord Nugent*, 5 B. & Ad. 58, is a case very similar to *Stowell v. Robinson*. The contract was a contract with respect to real estate; it was duly evidenced by writing; there was a parol variation on which the plaintiff, the vendor, had to rely for success. It was held on the same principle that he failed.

In Halsbury's Laws, vol. 7, p. 422, the situation is thus summed up: "If the original contract is one which is required by law to be made in writing, it cannot be varied by a part of the contract which if it stood by itself would not be required to be in writing, but in such a case the contract can be rescinded altogether by a verbal agreement. If the original contract, though made in writing, is one which is not required by law to be made in that form, it can be varied by a verbal agreement."

Where this paragraph speaks of a contract "required to begin in writing," the learned author clearly means a contract "required to be evidenced by writing"; as the cases shew, and as a reference to this paragraph in a later portion of the same treatise indicates. On page 528 it is said that the parol evidence may be admitted "to prove that a written contract has been rescinded or varied by a subsequent oral contract, provided that proof of the oral contract is not excluded by any statute: e.g., by the Statute of Frauds. See p. 422 ante."

Leake on Contracts, 6th ed., 583, after examining the authorities at law, states: "Where a plaintiff claims specific performance of a written contract, at the same time stating and offering to submit to subsequent parol variations, the Court will decree specific performance with the variations if the defendant is willing to accept the same, and, if not, according to the original contract"; citing for this *Robinson v. Page*, 3 Russ. 121, a case which abundantly justifies the text.

Under these circumstances, I think the plaintiff is entitled to judgment for specific performance, with costs. If any difficulty arises in working out the details, I may be spoken to, and if necessary, a reference may be directed; but I desire to avoid all unnecessary expense.